

THE IMPACT OF EMPLOYMENT CONTRACT LAWS ON PRIVATE SECTOR EMPLOYERS IN PORT VILA, VANUATU

By: Anita Jowitt*

SUMMARY

Vanuatu is an underdeveloped country with a rapidly growing population and a private sector labour market that is only slowly expanding. It has the highest labour costs of any Pacific Island nation, a factor which may act as a disincentive to private sector expansion. This raises the legal policy question of the extent to which employment contract laws act as a disincentive to employment growth. This paper is based upon preliminary analysis of data from a questionnaire distributed to employers in Port Vila, Vanuatu in 2003 and 2004. The analysis first examines the positivist legal assumption that employment contract law does affect employers' actions and the related hypothesis that if labour costs are pushed too high by employment contracts regulation then employers will hire fewer employees. This is rejected as too simplistic, as it does not entirely explain the non-use of law by various businesses, and the support of various labour laws that increase employers' indirect wage costs. Alternative reasons for the lack of use of law, including that law is ignored because it is not enforced and that law is seen as being largely irrelevant as it is a colonial transplant, are then explored. The paper concludes that any labour law policy that wants to have a positive impact on employers needs to take a more holistic view of the operation of the labour market.

JEL Classification: J 08; K 31; K 40

INTRODUCTION

Underdevelopment combined with rapid population growth creates a number of labour market issues for Vanuatu. The most pressing of these is how to create employment opportunities within the formal sector to absorb the rapidly increasing labour force. One of the key government strategies for addressing this problem is the encouragement of private sector led development, particularly that created through the attraction of direct foreign investment (DFI).¹

Labour costs play an important part in the private sector environment, and one concern is that they may be pushed too high by poorly considered labour laws. A recent Pacific Islands Forum Economic Minister's Meeting paper made it clear that to foster private sector led development, a variety of barriers to investment, including costs of 'hiring and firing workers'² need to be investigated. This paper noted that 'worker interests have to be balanced

* Lecturer in law, University of the South Pacific. This paper is based upon research being undertaken for a PhD in law. Comments can be sent to jowitt_a@vanuatu.usp.ac.fj

¹ One of the three major strategies in Vanuatu's Comprehensive Reform Programme, which was launched in 1997 is 'Private Sector Development based on private sector dynamism, openness to the global economy and sector policies to promote growth.' (Vanuatu Investment Promotion Authority, <http://www.investinvanuatu.com/vanuatu/policies.htm> (Accessed 6 July 2006). Whilst there have been a number of changes of government since 1997 private sector development remains a priority.

² 'Costs of Doing Business in the Pacific' (Session 1 paper, Forum Economic Ministers Meeting, Funafuti, Tuvalu, 8 – 9 June 2005) 1.

against the negative impacts of strict regulatory intervention, including less job creation and lower productivity. Perfecting this balance is a difficult task.’³

The relationship between a favourable investment climate and labour regulation is not only of concern to countries within the Pacific Islands region, but has been the subject of much international debate. Globalisation has led to internationalisation of the labour market and debate about whether labour standards should be universalised as part of the globalised trading regime. This debate centres on the questions of whether labour standards are needed to protect workers from exploitation in an increasingly globalised market and/or whether the imposition of labour standards are in reality designed to protect industrialised countries from competition due to low labour costs. On the one hand some voices claim that the lack of regulation of employment relationships in some developing countries gives them an unfair advantage as “sweatshop” labour conditions reduce production costs, with the result that goods can be supplied to the consumer at a lower price. This also impacts on employment in industrialised countries where labour costs are higher because of protective regulations, as companies can shift their capital to countries where labour costs are cheaper.

On the other hand, some governments of developing countries argue that industrialised countries are trying to use labour standards in a protectionist manner, by preventing developing countries from being able to utilize their comparative advantage in cheap labour. The argument here is that if developing countries are required to adhere to the same labour standards as industrialised countries then they will not be able to attract DFI. Further, domestic industry, which will not be able to afford to implement such labour standards, will collapse. This will reduce gross domestic product, damage local employment opportunities and increase the market for export goods from industrialised countries.⁴

Discourse about the impact of employment contract law on private sector development rests on the assumption that if labour costs are pushed too high by employment contracts regulation then employers will hire fewer employees. This assumption makes intuitive sense and also has theoretical support within “mainstream neo-classical”⁵ economic theory. Underpinning this assumption is the further notion that employment contract law does affect employers’ actions. This notion is usually accepted as intuitive and left unquestioned, maybe,

³ Ibid,2-3.

⁴ A summary of the different positions can be found in ‘Globalisation and its critics: A survey of globalisation’ *The Economist* 29 September 2001, Lift out section. See also Andre Raynauld and Jean-Pierre Vidal, *Labour Standards and International Competitiveness* (1998) chapter 1.

⁵ This theory is discussed in more detail below. I adopt Reimann’s terminology of “mainstream neo-classical economics” as there are many different schools of economic theory, but this is the school that dominates the teaching of economics, particularly at undergraduate level. (Nicola Reimann, ‘First Year Teaching-Learning Environments in Economics’ (Paper presented at EARLI Conference, Padova, August 2003).) Broadly defined, ‘neoclassical economics is an analysis that focuses on the optimizing behavior of fully rational and well-informed individuals in a static context and the equilibria that result from that optimization.’ (David Colander, Ric Holt and Barkley Rosse ‘The Changing Face of Mainstream Economics’ (Middlebury College Economics Discussion Paper 03-27, 2003) 5.) Analysis focuses on market behaviour, with markets being represented and analysed within an idealised supply-demand model.

because of the self justifying nature of the legal system, and the attendant nature of training in law.⁶ As an applied discipline law is simply concerned with what legal rules are as determined by specific rules of recognition. This approach, known as legal positivism, requires actors within the legal system (including lawyers, judges and government officials) to identify the correct legal rules and to apply them to a specific situation. In identifying the correct legal rules only the pedigree of the legal rule is of concern.⁷ The pedigree of a legal rule is determined by other legally determined “rules of recognition”, rather than by evidence of whether the rule is actually followed by anybody in society. Questions about how law is actually applied in practice are therefore of little concern during the training of lawyers. It is these trained lawyers who then go on to inform legal policy debate.

When this paper was initially conceived I accepted assumptions about the degree of significance that state law has in regulating the activities of businesses and proposed to examine how existing labour standards in Vanuatu impact upon employment levels. It soon became apparent that a narrowly focussed analysis of the interaction between employment contracts law, labour costs and employers’ behaviour would only superficially touch on how employers actually use employment contracts law to regulate their activities. Instead there was a need to draw on other socio-legal and economic traditions to provide theoretical insight into the relationship between employment contract law and employers’ behaviour.

This paper is based upon preliminary analysis of data from a questionnaire distributed to employers in Port Vila Vanuatu in 2003 and 2004. The analysis first examines the positivist legal assumption that employment contract law does affect employers’ actions and the related hypothesis that if labour costs are pushed too high by employment contracts regulation then employers will hire fewer employees. This is rejected as too simplistic, as it does not entirely explain the non-use of law by various businesses, and the seemingly irrational support of various labour laws that increase employers’ indirect wage costs. Other explanations for the relationship between state law and employer behaviour are then sought.

Before turning to the analysis there is a need to “set the context” by providing a description of Vanuatu and its labour market. Further, the analysis is based on my own quantitative research and there are some provisos about the methodology and resulting data which need to be established. The paper will first discuss these matters.

METHODOLOGY

There is very little existing literature or data on employer behaviour, or more generally the labour market, in Vanuatu. I therefore developed my own questionnaire. In order to

⁶ Alternatively, ‘Perhaps many academics ignore the functioning legal system for a much simpler reason. Looking at it is messy.’ (Stuart Macaulay, ‘Symposium: Law, private governance and continuing relationships: An empirical view of contract’ (1985) *Wisconsin Law Review* 480.)

produce data that could be treated quantitatively closed questions that largely required respondents to select from a list of responses were primarily used. The questionnaire contained questions in the following areas:

- Background information
- General awareness and use of labour law
- Wages and payments
- Annual leave and paid holidays
- Superannuation
- Termination
- Health and Safety
- Household employment
- General use of law⁸

About 10% of the questionnaires were supplemented with an interview in which respondents discussed their responses after they had completed the questionnaires.

The National Statistics Office carries out national censuses every 10 years which provide the best indication of the size of the labour force and give some indication of how the labour force is employed.⁹ The National Statistics Office has also carried out two specific labour market surveys on licensed businesses, the *Vanuatu 2000 Labour Market Survey Report* (LMS) and the *Small Business and Informal Sector Survey 1995* (ISS).¹⁰ These gave general information about the number of employers, the sectors in which the businesses operate and the number of employees engaged in each business. I used these data sources to develop a sample population of licensed businesses in Port Vila that had paid employees. This gave me a sample population of 1084 business units.

It was not possible to obtain a list of all businesses within the sample population.¹¹ I could, however, stratify the population by industry. As it was not possible to develop a sample frame of my sample population in order to allow for random sampling, instead the sample population was stratified by industry category and VAT registration status,¹² and the sample then selected proportionally. Once the data was stratified, it remained to select the actual

⁷ For further see Leslie Green, 'Legal Positivism' (2003) *Stanford Encyclopedia of Philosophy* <http://plato.stanford.edu/entries/legal-positivism/> (Accessed 6 July 2006).

⁸ A copy of the questionnaire is included as an appendix to this paper .

⁹ The most recent of these is the 1999 Census (Vanuatu National Statistics Office, *1999 Vanuatu National Population and Housing Census main report* (1999)).

¹⁰ These reports were *Vanuatu 2000 Labour Market Survey Report* (2000); *Small Business and Informal Sector Survey 1995 Report* (1996).

¹¹ A number of sources for this information, including the Chamber of Commerce – which every licensed business is statutorily a member of; and Vanuatu National Provident Fund, which is meant to have a register of employers, and the business licensing authorities were approached, but none had publicly available information.

¹² In Vanuatu most businesses with a turnover of more than 4 million vatu are required to register to pay value added tax. Financial services businesses are not required to register for VAT but instead pay a turnover tax (*Value Added Tax Act 1998*). Stratification by both industry and VAT registration ensured that both larger and smaller businesses were sampled.

respondents. Instead of preparing a precise list (which would have had to rely upon my personal knowledge and the telephone book, both of which immediately introduce bias) a team of fifteen interviewers was engaged to do the actual distribution of the questionnaires. Weekly reports of the number of questionnaires collected by industry strata were given to these interviewers, with instructions as to which areas were becoming underrepresented. In this way, although individual interviewers may have had their own personal biases, the effect of any individual's personal biases in selecting respondents should have been minimised.

I applied Cochran's formula for estimating sample size to my sample population, as it is the standard test in situations where no standard deviation for the population exists, as here.¹³ This gave me a sample size of 284 businesses.

Distribution of the questionnaires was carried out in November - December 2003. Once distribution of the questionnaires began it became apparent that a sample size of 284 was an unrealistic target. First, a number of businesses refused to participate. Second a number of the businesses surveyed had two or more business licenses. The sample size of 284 was based upon a sample population of 1084 *separate* businesses with licenses. However, as some businesses have multiple licenses¹⁴ this sample population is not correct. At this point in the survey process, I had no way of correcting this error. There is also no way of confirming that the stratification of business by industry was correct. However, this stratification was the only way of at least attempting to survey a fairly broad spread of businesses. By January 2004, I had 120 completed questionnaires. As the table below indicates a proportionate spread, based upon the (somewhat unreliable) stratification of the initial sample population was achieved.

The problems in sampling mean that the survey data cannot be reliably generalised. The sample size also does not allow for there to be useful statistical manipulation of data.¹⁵ However, there is a fair spread of industries and VAT and non VAT registered businesses. The sample is also of a fair size. Generalisation therefore comes with a caveat that the sample cannot be verified as representative and therefore the data, and the analysis that rests upon it, should be treated with some caution.

¹³ $N = (t^2 \times p \times (1 - p) / c^2)$, $N_1 = N / (1 + N/pop)$ Where N = sample size; t = alpha level as determined by the confidence level selected; p = estimate of variance and c = acceptable margin of error, N_1 = sample size with correction for limited population, pop = target population size. James E Bartlett, Joe W Kotrlík and Chadwick C Higgins, 'Organizational Research: Determining Appropriate Sample Size in Survey Research' (2001) 19(1) *Information Technology, Learning and Performance Journal* 43, 47.

¹⁴ Vanuatu's business licensing laws issue licenses to different categories of business. If a business carries out activities in more than one license area then it must obtain multiple business licenses (Section 19(2) *Business License Act 1998*).

¹⁵ This would have been somewhat problematic anyway as it is usually assumed that data is gathered by random sample.

		Percentage of businesses per category (Source: LMS; ISS)	Number of questionnaires returned	Percentage of total questionnaires
VAT registered or equivalent businesses	Agriculture, forestry, logging, fishing, mining	3.32	4	3.3
	Manufacturing	4.78	4	3.3
	Electricity and water	0.1	1	0.9
	Construction	4.34	8	6.7
	Retail and wholesale trade	21.3	25	20.8
	Hotels and restaurants	6.08	9	7.5
	Transport and Communication	4.05	4	3.3
	Finance and insurance	2.4	3	2.5
	Other business services	8.3	9	7.5
	Other services	5.73	11	9.2
Non VAT registered businesses	Transport	19.6	14	11.7
	Nakamals	3.4	4	3.3
	Retail Trade	16.6	19	15.8
	Other		5	4.2
Total		100	120	100

OVERVIEW OF VANUATU



Map of the Pacific Islands

Vanuatu is a collection of over 80 islands located in the south western Pacific. There are about 12 main islands although the population of approximately 200,000 people is dispersed widely, and just over 60 islands in the country are inhabited. Vanuatu has two urban areas, Port Vila, the capital, located on Efate and Luganville to the north, located on Espiritu Santo.¹⁶ It has an unusual colonial history, having been colonised jointly by France and England in an arrangement known as the Condominium. On gaining Independence in 1980

¹⁶ For general information on Vanuatu see the wikipedia entry on Vanuatu <http://en.wikipedia.org/wiki/Vanuatu> (Accessed 6 July 2006).

Vanuatu adopted or inherited various features from both colonial powers. In particular a dual education system, one French and one English, exists. The linguistic divide between Francophone and Anglophone speakers tends to create social and political divides. This is further complicated by the large number of indigenous cultures. Whilst the indigenous population is broadly Melanesian, over 100 linguistically distinct cultures exist in Vanuatu. Kinship ties remain strong and custom provides the basis for social ordering, particularly outside of the urban areas. The importance of custom is reflected in the legal system. Whilst the legal system operates as a common law system complete with an adversarial court system, the rules applied within the legal system are a combination of locally made legislation and judicial law, adopted English law, adopted French law and indigenous customary law.¹⁷ Further, all land in Vanuatu is owned by customary landowners, although land can be leased in order to allow for “modern” land dealings.¹⁸

Economy

Vanuatu is largely rural and is on the United Nations list of least developed countries.¹⁹ The economy is heavily reliant on agriculture. Vanuatu’s only significant exports are agricultural, and include copra, cocoa, beef and timber. Other important sectors are tourism and, due to Vanuatu’s tax haven status, the financial services sector.²⁰ Whilst there has been a slight decline in the relative importance of agriculture and a concomitant increase in the share of industry since Independence, Vanuatu still does not look to shift from an agrarian economy in the near future. One of the reasons for this is that development of local industry is hindered by weak infrastructure, particularly outside of urban areas. Inter island shipping is not always reliable and flights between islands are very costly. Road networks are poor. Electricity and water supply is limited to the urban areas and telecommunications networks are not very extensive. The cost of exporting goods, whether by ship or by plane, also hinders the development of export markets.

Since Independence Vanuatu has experienced erratic growth of gross domestic product (GDP). One of the reasons for this is that agriculture is vulnerable to natural disasters such as cyclones and droughts. Changes in international prices for Vanuatu’s exports, most notably the declining price for copra, have also affected GDP. Political instability has resulted in mismanagement and hindered foreign investment, particularly in the 1990s.²¹ A combination of poor growth in GDP and a rapidly growing population has seen real GDP per capita decline in the first 20 years since Independence. In 1980 real GDP per capita was 85,489 vatu. By 1989 it had declined to 79,905 vatu and in 1999 it was 77,577 vatu.²² Using 1987 US\$ as the base currency for comparison, real GDP per capita in US \$ is as follows: 1979: \$732; 1989: \$732; 1999: \$ 711.²³ In the past 5 years GDP has continued to be erratic, with -2.9% growth in 2001;

¹⁷ Article 95 *Constitution of the Republic of Vanuatu*.

¹⁸ Article 73 *Constitution of the Republic of Vanuatu*; *Land Leases Act* [Cap 163].

¹⁹ <http://www.un.org/special-rep/ohrls/ldc/list.htm> (Accessed 6 July 2006).

²⁰ Asian Development Bank, *Vanuatu, Economic Performance, Policy and Reform Issues* (1997) 3-5.

²¹ See chapter 1 of Simeon Athy & Ferdinand van der Walle (eds), *20 years of Central Banking in Vanuatu* (2000) for an overview of Vanuatu’s national economy.

²² *Ibid*, p 162.

²³ 1987 US\$ have been selected as the base currency because recent Human Development Reports use the 1987 US\$ as their base currency for comparison of GDP per capita The 1999 Human Development Report places GDP

-4.4% growth in 2002; 2.4% growth in 2003; 4% growth in 2004 and an estimated 3% growth in 2005.²⁴

Human development

This weak economic performance is mirrored in Vanuatu's weak human development performance. In terms of human development in 2005 Vanuatu was in the bottom of third of medium development countries on the United Nations human development index, with a rank of 118.²⁵ Whilst increasing life expectancy rates indicate that health care is improving, access to health care, water and sanitation are issues, particularly in rural areas. Standards of housing are basic. Kerosene continues to be the primary form of household lighting fuel and is used by 74% of houses in Vanuatu, as compared to 19% using electricity. Wood continues to be the primary form of household cooking fuel, used by 83% of houses, as compared to 15% who use gas. Only 6% of houses have private telephones.²⁶ The census defines the literacy rate as people who have completed 4 or more years schooling. Using this definition the literacy rate for Vanuatu is 74% (90% in urban areas and 69% in rural areas).²⁷ However, it should be noted that this definition of literacy bears little relation to the more usual functional definition of literacy as being able to read and write. Literacy in this sense is estimated to be 30% for women and 37% for men.²⁸ Functional illiteracy is therefore an issue in Vanuatu.

The labour force and unemployment

The bulk of the labour force is employed in subsistence agriculture, which absorbs 67% of the labour force. A further 25% engage in paid labour, with the remainder engaging in other activities such as charitable work or being unemployed.²⁹ This ensures that Vanuatu has a low official unemployment rate although some data indicates that there is a large pool of people who are underemployed, and would like to engage in additional paid labour within the formal sector.³⁰ It is also difficult to measure unemployment as some work, particularly agricultural

per capita, using 1987 US\$ as the currency, at 1980: 820; 1985: 962; 1990: 914 and 1997: 836, these figures are considerably higher than those derived from local statistical sources, and show an increase in GDP per capita in the period from 1980 - 1989. It is unclear what this discrepancy arises from.

²⁴ Reserve Bank of Vanuatu, *Quarterly Economic Review December 2005*

<http://www.rbv.gov.vu/Publications/quarterly/2005/Dec05/QRDec2005Text.pdf> (Accessed 6 July 2006).

²⁵ Human Development Report 2005 <http://hdr.undp.org/reports/global/2005/> (Accessed 6 July 2006).

²⁶ Vanuatu National Statistics Office, above n 9 at pp 27 – 31.

²⁷ Ibid, p 25.

²⁸ United Nations Development Program *Pacific Human Development Report 1999* (1999) 105.

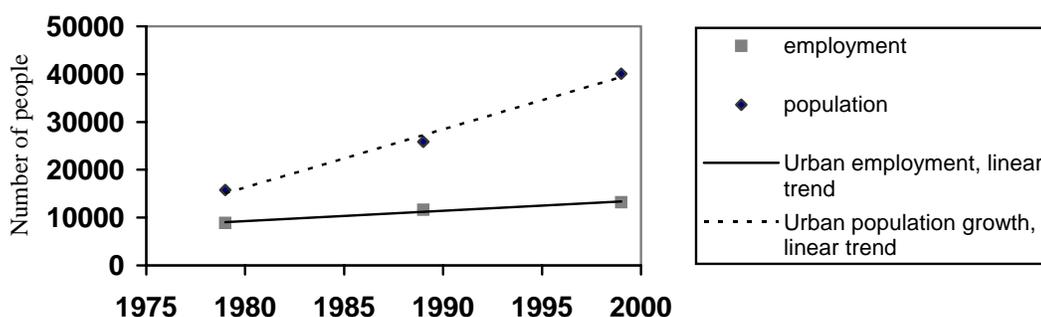
²⁹ Vanuatu National Statistics Office, above n 9 at p 32.

³⁰ The 1999 census reported that about 19,500 people were engaged in paid work. However, the Household Income and Expenditure Survey 1998 (the HIES) reported 48,000 people as working for pay. Although the HIES was a survey as opposed to a census, and therefore its results were estimates, one should be hesitant to conclude that the 1999 census results are more authoritative. Instead, the nature of each of the questionnaires must be examined to see how these figures were obtained. The census looked strictly at activity in the past 7 days. The HIES required households to keep a household income and expenditure diary for a period of a month. The HIES finding that 48,000 peoples' main daily activity was a paid job is possibly explained by the notion that this is reporting on peoples' main daily activity in terms of source of money, as opposed to main daily activity in terms of hours spent. This explanation is tenable given that the survey was examining household incomes and identifying the different sources of these incomes. The HIES data also suggests that, whilst there are about 19,500 people who are engaged in wage labour on a regular, more or less full time basis, there is a large pool of people that engage in part time or irregular paid labour that self identify as employed. The conclusion to be drawn is that there is a large number of underemployed people in Vanuatu. Whilst this pool of people may be registered as engaged in subsistence agriculture for the purposes of the census, they are also engaged in paid work when

and some tourist related work, is seasonal, creating a situation of normalised structural unemployment. Additionally, there is a perception that the “Weberian capitalist spirit” or ‘will to economise’³¹ has not been assimilated by all parts of society, resulting in a culture of working only for particular needs, such as school fees, and ceasing work when those particular needs are fulfilled.³²

Unemployment is of particular concern in the urban areas, in part due to rapid population growth³³ and a concomitant lack of growth in formal sector employment opportunities. This is powerfully illustrated by the figure below.

Urban population and employment, 1979 - 1999
(Source: Vanuatu Statistics Office, Censuses 1979, 1989, 1999)



This mismatch between urban population growth and urban employment growth are linked to concerns about disorder in two separate but related ways. First, there is fear that unemployment could lead civil disorder. Escalating disorder experienced in neighbouring Melanesian countries has some of its roots in income inequity arising from unemployment or lack of opportunity to access the cash economy. The June 2000 coup of Solomon Islands and coups in Fiji in 1987 and May 2000 have, in part, economic roots.³⁴ Fears that Vanuatu may experience similar civil disorder have fuelled some concern about unemployment, which were voiced particularly in the year 2000, when Vanuatu’s neighbours were being shaken by coups.³⁵

Second, there are fears that unemployment could fuel a crime problem similar to that found in Papua New Guinea (PNG). In PNG ‘high unemployment and lack of economic

possible. (Vanuatu National Statistics Office, *Household Income and Expenditure Survey 1998 Tabulation Report* (1999).)

³¹ Lewis, *The Theory of Economic Growth* (1955) 11.

³² ‘Workers typically enter the labour force solely to meet periodic goals, such as raising school fees or purchasing a consumer good item, and then move back to their subsistence oriented villages’ SRI International, ‘Private Enterprise Strategy Options for the South Pacific Region’ (Report prepared for Bureau for Private Enterprise, US Agency for International Development, March 1988).

³³ The annual intercensal population growth rate is 2.8%. The annual intercensal urban growth rate is 4.2%. (South Pacific Commission, ‘Oceania Population Data 2004’

<http://www.spc.int/demog/en/stats/2004/Pacific%20Island%20Populations%202004.xls>)

³⁴ See, for example, Tarcissius Kabutaulaka, ‘Beyond Ethnicity: The political economy of the Guadalcanal Crisis in Solomon Islands’ (State Society and Governance in Melanesia Working Paper 01/1, 2001). Canberra; Satish Chand, ‘Ethnic Identity, Income Inequity and Growth in Independent Fiji’ (State Society and Governance in Melanesia Discussion Paper 97/6, 1997).

³⁵ See, ie ‘PM says Vanuatu can avoid ‘Coup’ *Vanuatu Weekly Hebdomaire* 10 June 2000, p 1.

opportunity are seen as the prime cause of crime,'³⁶ and it is this crime problem that is 'the single biggest disincentive to business'.³⁷ The crime problem in PNG is such that victimisation rates in its cities are considerably higher than in other cities notorious for law and order problems such as Johannesburg and Rio De Janiero.³⁸ There is a perception that Vanuatu's unemployment problem could fuel a problem similar to that found in PNG. From media reports throughout 2000, the year when public perceptions of unemployment fuelled disorder were starting to be more strongly voiced, it would seem that patterns of behaviour that were noted in PNG at the beginning of its law and order problem are now perceived as becoming apparent in Vanuatu. In a Trading Post story headlined 'Gang Attack Fires Fears' it was stated that a gang attack 'sent shivers down the spine of expatriates who are concerned that the country is following in the footsteps of Papua New Guinea, Solomons and Fiji.' The article argued that urban migration, youth unemployment and inadequate law enforcement leading to confidence amongst criminals are all becoming more apparent. The presented solution was that 'all unemployed youths should be sent home to their islands'.³⁹

SCOPE/LEGAL FRAMEWORK

As the overview of Vanuatu indicates, there are a large number of issues surrounding the development of its labour market. Infrastructure is poor and costly, there is a relatively small local market for products and the cost of exporting goods, whether by ship or by plane, hinders the development of export markets. Potential social instability and a largely unskilled workforce detract from foreign investment inflows. A further issue is labour costs - Vanuatu has the highest labour costs of any Pacific island country.⁴⁰

My research focuses only on the issue of high labour costs and the role of law in creating or raising these costs; one small thing to be addressed as part of a much wider multidimensional and multidisciplinary series of policy questions. As a lawyer who teaches labour law it is, perhaps, natural to attempt to contribute to labour market policy development from within the bounds of my own discipline. The wealth of economic policy debate internationally on the potentially distorting impact that minimum wage laws and other employment regulations can have also suggests that the narrow issue selected is, however, important.

³⁶Maeve O'Collins 'Law and Order in Papua New Guinea: Perceptions and Management Strategies' (State Society and Governance in Melanesia Working Paper 00/1, 2000) 3, (quoting Bill Standish).

³⁷Theo Levantis *Papua New Guinea, Employment Wages and Economic Development* (2000) xi.

³⁸Ibid, at p 14.

³⁹'Gang Attack Fires Fears' *Trading Post* 28th October 2000, p 1. Another article headlined 'Unemployment likely reason for increased theft and sex offences' captures the public perception of the unemployment/crime link (*Trading Post*, 15 Jan 2000, p 3). It should be noted that this public perception is not necessarily accurate. In the case of this article, for example there was a lack of evidence that the thefts detailed in the article were carried out by unemployed people.

⁴⁰Asian Development Bank, above n 20 at p 27.

The particular labour costs I chose to examine relate to direct or indirect payments by employers to employees. They largely parallel the ‘labour force conditions’ that have been identified by the Pacific Islands Forum Secretariat Trade and Investment Division as being sufficiently significant to have been included in their business costs survey.⁴¹ These are:

- Minimum wages laws
- Paid holidays
- Superannuation contributions
- Termination costs

Minimum wages are provided for by the *Minimum Wage and Minimum Wages Board Act* [Cap 182]. In 2005 the minimum wage was reviewed and set at 20,000 vatu per month⁴² for all full time workers. This makes the hourly minimum wage 114 vatu.⁴³ Wage reviews have not occurred with great frequency. Prior to the 2005 wage review the minimum wage was 16,000 vatu per month or 91 vatu per hour for all workers, an amount set in 1995.⁴⁴ The *Minimum Wage and Minimum Wages Board Act* does give the Minister the power to set different minimum wages for different categories of workers. From 1987 – 1995 the urban minimum wage was set slightly higher than the rural minimum wage,⁴⁵ but this practice was discontinued in the last two minimum wage reviews.

Further, most workers who work more than 44 hours per week are entitled to overtime payments of between one and a quarter and one and three quarters of the base rate of pay.⁴⁶

In terms of leave, Vanuatu recognizes 14 public holidays annually.⁴⁷ In addition the President can,⁴⁸ and frequently does,⁴⁹ declare additional days as public holidays. Employees

⁴¹ http://www.forumsec.org.fj/tid/bcs/bcs_int.htm (Accessed 6 July 2006).

⁴² Order 43 of 2005; gazetted in Vanuatu Gazette 1/2006, 6 January 2006.

⁴³ Section 2 of the *Minimum Wage and Minimum Wages Board Act* [Cap 182] states that the monthly minimum wage is ‘calculated on the basis of 22 working days in a month and 8 working hours in a day’. To get the hourly minimum wage the monthly wage is divided by 176 (22 x 8).

⁴⁴ Order 5 of 1995.

⁴⁵ The *Minimum Wage and Minimum Wages Board Act* was commenced in 1984 and set the minimum wage at 7,000 vatu per month for all workers. Order 56 of 1987 increased the minimum wage to 8,500 vatu per month for urban workers and 7,700 per month for rural workers. These amounts were increased to 13,200 vatu and 11,440 vatu by Order 27 of 1991. Order 5 of 1995 set the minimum wage at 16,000 vatu per month for all workers and this approach was continued in the most recent minimum wages order.

⁴⁶ It should be noted that overtime is not payable to domestic workers (s 26(2)) or to managerial staff or to businesses in which only family are employed (s 27). Section 26(1) of the *Employment Act* [Cap 160] sets the rate of overtime payments as follows:

26. (1) In respect of work carried out in excess of the normal hours of work mentioned in section 22(1) an employee shall be paid overtime at the following rates-
- (a) for work on public holidays or Sundays: at a minimum rate equal to one-and-a-half times the normal hourly rate;
 - (b) for work carried out in excess of the normal weekly hours of work-
 - (i) for the first 4 hours: at a minimum rate equal to one-and-a-quarter times the normal hourly rate;
 - (ii) in excess of 4 hours: at a minimum rate equal to one-and-a-half times the normal hourly rate;
 - (c) for work (other than work as a night watchman) carried out at night between 8 p.m. to (sic) 4 a.m. in excess of the normal weekly hours of work: a minimum rate equal to one-and-three-quarter times the normal hourly rate.

⁴⁷ Schedule of the *Public Holidays Act* [Cap 114].

⁴⁸ Section 2.

cannot be compelled to work on these days, but if they do are to be paid one and a half times their normal salary.⁵⁰ There is no express requirement that employees be paid for public holidays if they do not work although it is arguably a customary implied term that employees will be paid for public holidays which fall on regular work days.

As well as public holidays employment law provides for three categories of leave: annual leave; sick leave; and maternity leave. Annual leave is provided for in section 29 of the *Employment Act*. Section 29(1) provides that '[e]very employer shall grant an employee who has been in continuous employment with him for 12 consecutive months annual leave on full pay at the rate of 1 working day for each month of employment.' Case law has clarified that in order to be in continuous employment an employee must work 22 days or more per month.⁵¹ In effect, therefore, leave is not a statutory right for many part time workers.

The rate of leave increases to two days per month once an employee has been working for more than 20 years. After 25 years of employment there is a further increase to 4 days per month. This rises to 6 days per month after 30 years of employment.⁵²

Sick leave is provided for in s 34(1): 'every employee who has been in continuous employment with the same employer for more than 12 months shall be entitled in every year to 21 working days' leave on full pay on grounds of illness.' As with annual leave, the requirement that an employee be in continuous employment means that paid sick leave is primarily available to full time workers only. Employees in urban areas must provide medical certificates if they are sick for more than 2 days⁵³ but there is no requirement that the employer must pay for any medical examinations unless the examination is done at the employer's request.⁵⁴

Vanuatu has generous maternity leave provisions compared with many other Pacific Island countries.⁵⁵ A woman shall not be permitted to work for 6 weeks after giving birth, and shall be permitted 6 weeks leave prior to giving birth if she wishes it.⁵⁶ During this period the employer is required to pay to the employee not less than half of her regular pay.⁵⁷ A woman cannot be terminated whilst she is on maternity leave.⁵⁸ Unlike sick leave and annual leave allowances, which an employee only gains eligibility for once he or she been in continuous

⁴⁹ For instance, in 2005 1 extra public holiday was declared for 28 July in order to extend the Independence Day celebrations.

⁵⁰ *Employment Act* [Cap 160] s 26(1)(a).

⁵¹ *Daniel v Nguyen Huu Hong* [2004] VUSC 40 www.paclii.org (Accessed 23 March 2006).

⁵² Section 29(2).

⁵³ Section 34(2)(a).

⁵⁴ Section 34(4).

⁵⁵ For example, in Kiribati, Tuvalu and Solomon Islands the number of weeks of maternity leave granted is the same as in Vanuatu, but maternity payments are only a ¼ of the regular salary. In Fiji the number of weeks of maternity leave granted is also the same, but maternity payments are a set amount of \$1.50 per day, and employees are only entitled to maternity leave if they have worked more than 150 days in the 9 months before going on maternity leave. In Samoa and Tonga there is no legislative maternity leave provision.

⁵⁶ Section 36(1).

⁵⁷ Section 36(2).

⁵⁸ Section 37.

employment with the employer for a period of 12 months there is no minimum period that a woman must be employed for before she becomes eligible for maternity leave.

Both employers and employees are required to make superannuation payments. contributions into the Vanuatu National Provident Fund (VNPF) must be made for all employees who earn over 3000 vatu per month.⁵⁹ The current rate of contribution is 8%; 4 percent being deducted from the employee's wage and 4% being a contribution by the employee.⁶⁰ The employer has the responsibility of deducting the VNPF contribution from the employee's wage and paying the contribution.⁶¹

In relation to termination costs there are two allowances an employee may be entitled to: severance allowance and repatriation allowance. Part XI of the *Employment Act* [Cap 160] establishes a severance allowance regime. There circumstances in which an employer is required to pay severance are:

- When an employee has been in the continuous employment of an employer for a period of not less than 12 months and
 - the employer terminates his appointment; or
 - the employee retires on or after reaching the age of 55 years; or
 - the employer retires the employee on or after reaching the age of 55 years;
- when an employee has been in continuous employment with the same employer for a continuous period of not less than 10 consecutive years, the employee resigns in good faith; and
- when an employee ceases to be employed by reason of illness or injury and is certified by a registered medical practitioner to be unfit to continue work⁶²

The main exception to the requirement to pay severance is if the employee is dismissed for serious misconduct.⁶³

The amount of severance is provided by s 56(2) to be half a month's⁶⁴ wages⁶⁵ for every 12 months worked. Pro rata payments are made for any period of less than 12 months worked.⁶⁶

⁵⁹ *Vanuatu National Provident Fund Act* [Cap 189] s 25(2).

⁶⁰ Section 25(1) *Vanuatu National Provident Fund Act* [Cap 189] as amended by s 10 of the *Vanuatu National Provident Fund (Amendment) Act 2003*.

⁶¹ Section 26.

⁶² Section 54, as amended by the *Employment (Amendment) Act 1995*.

⁶³ Section 50(2). Other exceptions are also found in s 50.

⁶⁴ The wording of section 56(2) caused difficulties for a number of years as it appeared that people who were paid at intervals of less than one month were entitled to more severance allowance than those paid at intervals of one month. In 2003 the Court of Appeal ruled that 15 days remuneration meant 15 calendar days, and not 15 working days, so the rate of severance allowance is basically the same now, regardless of how frequently an employee is paid *Public Service Commission v Manuake* [2003] VUCA 21 <http://www.paclii.org> .

⁶⁵ Again whilst the wording causes some difficulties as to the exact basis on which severance was to be calculated case law also determined that for the purposes of severance allowance remuneration only means wages paid, and not other benefits, such as housing benefit *Bank Indosuez v Ferrieux 2* [1989 – 94] Van LR 490.

⁶⁶ Section 56(2)(b).

Part XII of the Employment Act gives a repatriation allowance, on termination, to employees whose ordinary place of residence is 50 kilometres or more from their place of work, and who were brought to the place of work by the employer.⁶⁷ This allowance is also payable to the employee's spouse and minor children if they were also brought to the place of employment by the employer.⁶⁸ Repatriation allowance covers subsistence and travel⁶⁹ and must be taken within 6 months of the employment relationship ending.⁷⁰

These laws increase an employer's costs considerably. To illustrate, a worker who has worked for more than 1 year and is working 5 days per week and earning 1000 vatu per day has 260 paid work days in a year and receives 260,000 vatu in wages per year. An additional 4% (10,400 vatu per year) is paid in National Provident Fund contributions and the anticipated severance payment is 15 calendar days wages (11,000 vatu). With these indirect costs the wage becomes 281,400 vatu per annum. The worker is entitled to 12 days paid annual leave per year⁷¹ and up to 21 days of paid sick leave. Assuming that the worker takes all of their sick leave, then only 227 days are worked, although the employer is paying wages for 260 days. Taking only these costs into account the cost of the labour input is 1240 vatu per day worked, and not the 1000 vatu per day direct wage. If the worker also takes maternity leave then the employer has to pay a further 60 days of leave on ½ salary. This increases labour costs to 1428 vatu per day worked.

Other costs can also be added. Many businesses, particularly in tourism and retail, remain open on public holidays. On these days workers are entitled to one and a half times their normal salary. Repatriation costs may also be payable. Even without adding these costs, it is clear that Vanuatu's labour laws can significantly affect the cost of labour.

ANALYSIS OF DATA: IS THERE SUPPORT MAINSTREAM NEOCLASSICAL ECONOMIC THEORY?

The first thing that I set out to explore in this research was the hypothesis that if labour costs are pushed too high by employment contracts regulation then employers will hire fewer employees. This hypothesis, which aligns with both mainstream law and economics and mainstream neo-classical economic theory assumes, amongst other things, that actors are rational maximisers of profit, that there are no transaction costs and that all actors have perfect information. Mainstream neo-classical economic theory suggests that given these assumptions, left to its own devices the labour market will settle into equilibrium, or a balanced state in

⁶⁷ Section 58(1).

⁶⁸ Section 59.

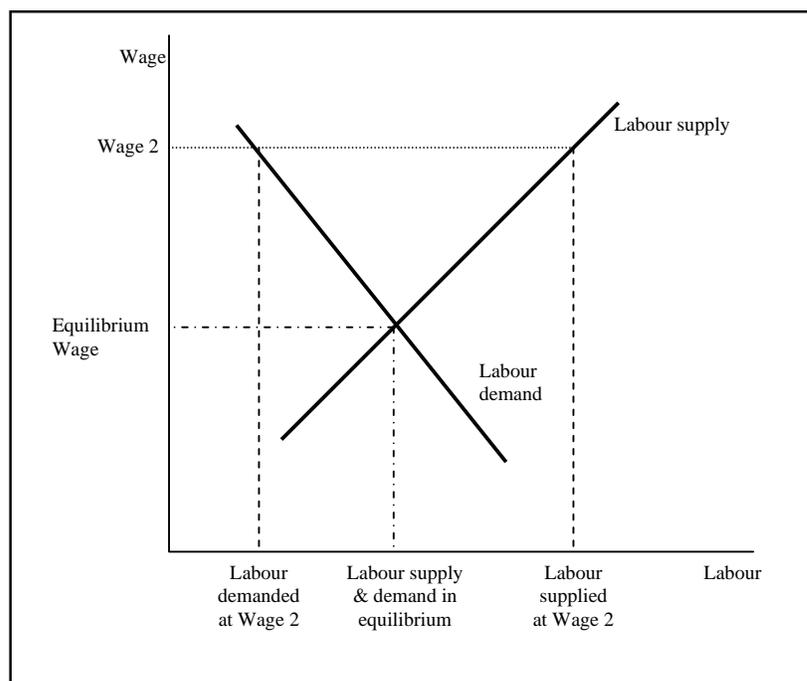
⁶⁹ Section 62.

⁷⁰ Section 58(2).

⁷¹ This assumes the worker has been employed for less than 20 years, as leave does increase. For instance a worker who has been working 30 years is entitled to 72 days paid annual leave per year and 21 days paid sick leave per year. In this instance labour costs rise to 1685 per day although the direct wage is only 1000 vatu per day.

which the wage is set at such an amount that the amount of labour demanded is equal to the amount of labour supplied.⁷²

An employer's decision as to how much labour to hire largely depends on the cost of each employee in relation to the output, or product, that that employee will produce.⁷³ Reducing the theory down to the "bare basics", demand for labour decreases as wages increase. Conversely, more people will seek jobs as wages increase. Laws that ostensibly protect workers but drive costs so high that firms thereby seek other methods of production using less labour, or stop production altogether decrease demand for labour. This is often represented graphically:



The graph above represents the quantity of labour demanded and supplied at each different price, or wage, if nothing else changes. If minimum wage law is introduced that sets the minimum wage at a level that is higher than the "natural" market equilibrium, supply of labour will exceed demand.

As I could not test this hypothesis by experimentation my intention was to use the data from the questionnaire to identify areas where employers indicated dissatisfaction with labour laws and their impacts on costs. I also hoped to identify broad patterns of behaviour which might indicate that employers were either providing statutory minimum benefits or otherwise altering employment practices to minimise labour costs. One of the easiest ways to reduce law imposed labour costs is to use casual or part time workers, as they are not eligible for sick

⁷² For an overview of the basic economic theory see Douglas McTaggart, Christopher Findlay and Michael Parkin, *Economics* (2nd ed, 1996) chapter 14.

leave, annual leave or severance payments. This would appear to be a profit-maximising strategy, particularly in low-skilled jobs where on the job experience is not so important. As there is a large pool of unemployed this strategy should be feasible.

In analysing the data the first thing I did was to identify industry categories that would be least likely to be affected by labour regulation because they are already providing more than the statutory minimum in terms of wages and other benefits. Questions in the survey relating to minimum wages were:

- How many of your staff receive a wage of 91 vatu or less per hour?
- How many of your staff receive a wage of 182 vatu or more per hour?⁷⁴

Unsurprisingly no businesses in the electricity and water sector and less than 10% of businesses in the finance and insurance, other business services or other services industry categories were paying minimum wage to any staff. Similarly more than 70% of businesses in each of these categories were paying all or some of their staff more than double the minimum wage. These industry categories require literate staff, and absorb most of the more highly educated labour force. As there are shortages of educated labour higher wages need to be paid in order to attract and retain staff.

At the other end of the wage scale, all of the employees 31% of transport and communication businesses and 23% of retail and wholesale businesses were receiving the minimum wage. A further 14% of retail businesses employed some minimum wage labour. Businesses in the categories of agriculture and hotels and restaurants were the next largest users of minimum wage labour, with 50% of agriculture businesses and 38% of hotels and restaurants employing some minimum wage labour. Again this is unsurprising. Retail shop attendants are often fairly poorly educated and are usually women. There is considerable competition for these positions as they offer longer and more regular hours than domestic house work, which would be the most available alternative work. Transport businesses are almost all small scale ni-Vanuatu owned and operated. It is not difficult to get a “bus”⁷⁵ or taxi license and there are not many work alternatives available. Vanuatu has a large pool of people engaged in subsistence agriculture, and many of those want to engage in at least some paid employment, so there will be considerable competition for agricultural jobs. Hotels and restaurants have a number of fairly low skill positions that it is easy to attract replacement staff to so there is little need to pay high wages to attract or retain staff.

⁷³ The cost of technology that could be used as a substitute for labour and the market for the output will also affect the demand for labour.

⁷⁴ At the time of administering the survey the minimum wage was 91 vatu per hour

⁷⁵ In Port Vila there are no regular bus services. Instead minibuses which have no set route collect passengers and take them to where they want to go, collecting other passengers en route.

Having decided to look specifically at the responses of businesses in the industry categories of transport and communication, retail and wholesale trade, agriculture and hotels and restaurants the next questions analysed were:

- If Vanuatu had no minimum wage do you think you would employ more workers?
- If Vanuatu's minimum wage were doubled do you think your total number of employees/hours of labour input decrease?

These questions provide a crude measure of the likely impact of changes in minimum wage law. Again responses were not too surprising. Whilst 60% of the sample population as a whole would not employ more staff if there were no minimum wage, two business categories stood out as being affected by the minimum wage laws. Twenty four percent (24%) of both retail and wholesale trade businesses and transport businesses said they would employ more staff. A further 26% of retail and wholesale trade business and 35% of transport businesses were unsure of whether they would employ more staff.

The impact of doubling the minimum wage would have consequences for more businesses. Only 34% of the total number of businesses would not decrease their labour input, with 42% stating that input would decrease and a further 24% being unsure of the impact on their labour input. The industry groupings most likely to be affected by increasing minimum labour standards are those that make most use low skilled and easily replaceable workers, which is consistent with mainstream economic theory.⁷⁶ Agricultural businesses would be the most affected, with 75% stating that labour input would decrease and 25% being unsure of the impact. Employment in retail and wholesale trade, would be the next affected, with 50% of businesses stating that labour input would decrease and a further 29% being unsure of the impact. Employment in both transport and hotel and restaurant businesses would also decrease with 44% and 38% percent of businesses in each respective category saying they would terminate staff. Manufacturing would be the other business sector most affected with 50% of businesses saying they would lose staff and a further 25% being unsure of the impact of such a change.

The data on the minimum wages does appear to support the economic theory that if labour costs are set too high by regulation then employment will decrease – particularly at the “low end” of the employment market. Industries that will be particularly affected are transport and communication, retail and wholesale trade, agriculture and hotels and restaurants. As hotels and restaurants and retail and wholesale trade were the two largest employment providers in this survey, together providing almost 40% of the jobs, this potential impact

⁷⁶ Posner notes that the ‘unemployment effects of the minimum wage are concentrated among marginal workers... [and that] the fixing of the minimum wage has no effect on the demand for workers whose marginal productivity is high and who therefore receive a free-market wage above the minimum wage.’ (Richard Posner, *Economic Analysis of Law*, (1998, 5th ed) 301 – 302.)

should be of some concern. However, when the data in other areas of costs was analysed, the results were not so clear.

The questions on the amount of paid annual leave given to workers was often incomplete, in part because different categories of workers within a business may get different amounts of leave, and in part because the amount of leave might vary from year to year as paid leave is often given for things like marriages and deaths. As extended families are an important feature of daily life these events are somewhat frequent. There was, however, a good response to the question, 'Do you pay staff for public holidays that they have off?' Whilst it is not a statutory requirement to pay workers for unworked public holidays, 56% of businesses did so, although this increases their labour costs by about 5.7% above the wage paid. Again, however, the industry categories least likely to pay wages for unworked public holidays were the four which are most likely to pay minimum wages. Sixty two percent (62%) of hotels and restaurants, 61% of transport and communication businesses, 50% of agriculture businesses and 48% of retail and wholesale trade businesses surveyed did not provide paid public holidays.

The question, 'If the statutory annual leave allowance was 5 days per year, would you give your employees only 5 days leave per year?' was intended to provide a crude measure of how closely the current leave provided is tied to statutory requirements. It generated some uncertainty amongst survey participants, and about 10% did not answer the question. Of the respondents to this question, 26% said yes, 46% said no, 14% said their decision would depend upon what other employers did and 14% said they did not know what they would do. The only industry categories that showed a more enthusiastic response to this question were agriculture, with 50% of businesses saying they would reduce leave, transport, with 47% saying they would reduce leave and hotels and restaurants with 43% saying they would reduce leave.

Responses to the series of questions about the Vanuatu National Provident Fund (VNPF) payments were unexpected. The VNPF is widely perceived to be a poorly managed, if not corrupt institution. Contributors have consistently received a 0 – 1% return on their funds and there have, at times, been fears that mismanagement will mean that contributors' funds will not be available when they reach the age of 55.⁷⁷ At the time of the questionnaire the VNPF contribution was set at 12% (6% from the employee and 6% from the employer), a not insignificant indirect wage cost. As employers have the responsibility for deducting the employee contribution and making the payments, a process described by one respondent as 'an administrative nightmare' I was expecting the data to show a distinct lack of enthusiasm for VNPF.

⁷⁷ In 1996 and 1997 the VNPF was the subject of two Ombudsmans reports. (See Edward Hill, 'Digest of Vanuatu Ombudsmans Reports (2001) http://paclii.org.vu/vu/ombudsmanreports/Vanuatu/Digest/digest_index.html (Accessed 6 July 2006). This led to riots in early 1998 which were only quelled after State of Emergency Order (Order No. 12 of 1998) which allowed members to withdraw their funds was passed.

The majority of respondents (66%) did contribute 6% to the VNPF. Of the others, 2% avoided VNPF payments by only employing casual labour and paying each worker less than 3000 vatu per month, and 13% simply did not pay VNPF. Two industry categories stood out as ignoring VNPF requirements: nakamals⁷⁸ and transport operators. Seventy five percent (75%) of nakamals and 33% of transport operators did not pay VNPF. At the “other end of the scale” 19% contributed the full 12% to the VNPF, rather than making a deduction from the employee’s salary. This practice was more prevalent in two industry categories: agriculture, with 50% of respondents saying they contribute 12%; and retail and wholesale trade, with 23% of respondents saying they contribute 12%. Possibly these employers, who are more likely to pay minimum wage compensate for paying a low direct salary by increasing the indirect wage? Whilst this explanation seems plausible, responses to the question, ‘Does the payment of VNPF affect your decision on how much to pay your staff as a basic wage?’ do not bear it out. None of the agriculture or retail and wholesale trade businesses that contribute 12% said that the VNPF payment affects their decision as to the basic wage. Indeed, relatively few businesses (16%) did connect wage rates and VNPF payments.

Another surprise was the responses to the question, ‘Do you think the current rate of the employer contribution to VNPF is set too high?’ Only 34% said it was set too high, with a further 42% saying VNPF is set at the right level and 2% saying that it is set too low. The remaining 22% had no opinion or did not know. As this is a government imposed cost and there is a general perception that the VNPF is not a good superannuation plan I would have expected more people to say that the rate was too high. It is somewhat ironic that in the middle of administering the questionnaires the amount of the VNPF contribution was reduced to 8% (4% from the employer and 4% from the employee). There had been little consultation or publicity on this proposed change and the reasons for it are not entirely clear. Whilst it was perceived as a benefit to employers, there had, in actuality, been little demand for it.

The termination regime has also been identified by commentators as being a significant inhibitor if job growth⁷⁹ so I was expecting to find that employers were generally unsupportive of it. The opposite was true, with 81% of respondents agreeing that the idea of employers giving a severance allowance was a good thing. There was also no overwhelming disagreement with the amount of severance allowance payable, with 49% saying that severance is not set too high. Only 34% said it was set too high, with the remaining 17% not sure or not answering the question.

As with VNPF payments some respondents (15%) did not pay severance allowance. A further 16% considered that the severance allowance did not apply to them. Of the 16% that

⁷⁸ Nakamals, are places where people go to drink kava, a local drink made from a plant root which is a mild narcotic. Nakamals can only be operated by ni-Vanuatu.

⁷⁹ See, for example, Paul McGavin, *Labour resource utilisation in Melanesia* (1997); Asian Development Bank, above n 20 at chapter 2.

said severance allowance was not applicable, a third had a strategy of only employing short term or casual staff. As severance is only payable to people who work for more than 4 days per week for a period of one year or more this effectively removes the requirement for severance. Incidentally it removes the need to pay for annual or sick leave and can also remove the need to pay VNPF contributions.

Again the industry groups that ignored the statutory requirements most frequently were nakamals and transport operators. No nakamals paid statutory severance allowance, although other forms of payments were given. One of the interviewed respondents explained how when staff left they were usually leaving Port Vila and going back to the islands. Instead of providing cash, severance in the form of things such as roofing nails and corrugated iron for building houses would be provided and that this was a fairly common practice. Only 50% of transport operators provided severance allowance, with 39% simply not paying it and the remainder stating it was not applicable as all staff were casual or part time.

Severance payments can be quite considerable, especially when long term employees leave, or when a business closes down and all staff need to be paid severance at the same time, and one area that I have seen amongst acquaintances as creating difficulties for employers is finding the money to pay severance allowances. As this appears to happen in businesses in which severance is not taken into account as a potential indirect wage cost the survey contained a question asking, 'Do you have any way of minimising or spreading the load of the severance allowance?' The majority of businesses (68%) had no strategy which indicates a lack of explicit realisation that severance payments are part of the indirect wage. Only 18% maintained special savings for severance. A further 14% paid severance annually, a strategy which may not even be effective if the severance is given in the form of a gratuity or Christmas bonus.⁸⁰

At this point, some patterns seem to be emerging. First, many businesses would not be unduly affected by moderate changes in minimum wage laws as they are already paying well above the minimum in certain areas. This, however, can be explained in terms of the economic theory laid out earlier as wage premiums must be paid to attract and retain qualified and skilled staff, of which there is a shortage in Vanuatu. This explanation is further supported by data indicating that transport businesses, retail and wholesale businesses, agriculture businesses and hotels and restaurants are the largest users of minimum wage labour. In all of these fields there

⁸⁰ To minimize the possibility of a large severance payment on termination some employers terminate their employees every year, pay out their severance allowance, and then reemploy them. The legality of such an approach has never been tested in court. Other employers pay their staff an annual bonus. This may reduce large severance allowance payments for long term employees as s 57(b) of the *Employment Act* [Cap 160] states that any gratuity granted by the employer or any payment into a pension fund other than the Vanuatu National Provident Fund can be deducted from the severance allowance payable. The validity of paying annual gratuities in order to reduce the severance allowance burden has, however, been questioned by the Court of Appeal, which recently stated that '[i]n our opinion only gratuities granted by the employer at the time of dismissal may be deducted under S. 57(b)(i)' (*Mouton v Selb Pacific Ltd (Judgment #3)* [1998] VUCA 8 <http://www.paclii.org>). No reason was given for this statement, however and the matter has not been revisited by the Court of Appeal.

is demand for unskilled labour and there is little investment in on-the-job training. It is easy to attract replacement staff so there is little need to pay high wages to attract or retain staff.

The data on annual leave can also be explained in terms of the economic theory. Many businesses pay for unworked public holidays, even though this is not a statutory requirement. Again, however, this may be considered as a form of wage premium for skilled workers, as the industry categories least likely to pay for unworked public holidays are the industries with the greatest demand for unskilled labour: transport businesses; retail and wholesale businesses; agriculture businesses; and hotels and restaurants.⁸¹ Severance allowance is a delayed payment which may also serve to reduce turnover.⁸² Employers' willingness to pay national provident fund benefits and even pay additional benefits may also be explained in terms of helping to create an environment in which people are motivated to work. As Stiglitz notes, 'labour is unlike any other commodity.'⁸³ Unlike with other factors of production, workers need to be given a range of incentives to perform. The threat of termination for non-performance may not be as effective as positive incentives such as superannuation or leave.

Less easy to explain is the apparent lack of explicit connection in employers minds between actual wages and indirect wage payments. Employers, as rational profit maximisers, would be expected to relate these indirect wages to direct wage amounts, however data indicates that very few employers do explicitly make this connection. Employers may also be expected to want to see payments in these areas reduced.⁸⁴ Again data did not reflect this expectation. Indeed, a number of businesses paid more than they were required to in respect of VNPF. Although these businesses were most likely to pay minimum wage, most of them explicitly rejected the possible explanation was that they were compensating for the low direct wage. Instead interview data suggested that employers were somewhat influenced by both "market practice" and a more generalised sense of fairness. This ill defined sense of fair play was also used to explain why public holidays are paid for and why leave would not be reduced below a certain amount even if statute permitted it.

Another pattern that emerged was that some legal regulations, notably VNPF payments and severance allowance are consistently ignored by certain industry sectors. Further analysis to identify commonly breached laws suggested that 12% of business are not registered for VAT even though their business turnover is over 4 million vatu per year. Twenty three percent (23%) of businesses which require staff to work overtime pay below statutory minimum

⁸¹ Additional leave benefits may increase worker productivity and may 'attach the worker more firmly to the company... [which] reduces the company's turnover and hence its hiring and service costs.' (Lloyd Reynolds, Stanley Masters & Colletta Moser, *Labor Economics and Labor Relations* (11th ed, 1998) 399.)

⁸² Ibid, 400.

⁸³ J. E. Stiglitz, 'Employment, Social Justice and Societal Wellbeing' (2002) 141(1-2) *International Labour Review* 9, 10.

⁸⁴ Unlike the United States, where sources indicate that employers may not be concerned about social security payments such as payments to superannuation as there are tax advantages ((Lloyd Reynolds, Stanley Masters &

overtime rates. Fifty nine percent (59%) of businesses that require staff to work on public holidays provide less than the statutory minimum payment for this.

Again this could have an economic explanation – if there is no enforcement then the cost of breaking laws is nil.⁸⁵ It also fits with the popular “post-colonial” explanation that introduced laws have little relevance to day to day lives. This explanation, and the apparent streak of fair play running through employer behaviour makes the application of economic theory about the relationship between law and labour demand somewhat problematic. Both bear further examination.

WHY ARE SOME LAWS NOT BEING FOLLOWED?

Lack of enforcement?

The main institution involved in the administration of labour law is the Labour Department. The *Employment Act* establishes a Commissioner of Labour and labour officers, who have broad powers of inspection.⁸⁶ As of March 2006 there are two District Labour Offices, one in Vila and one in Santo. Each office is staffed by two labour officers.⁸⁷ The other main role of labour officers is to attempt to settle labour related disputes. Vanuatu has no permanently establishment employment law tribunal. Instead disputes that cannot be resolved are dealt with by the general court system. In order to reduce the number of labour related disputes that need to go to court, the *Trade Disputes Act* [Cap 162] provides a dispute resolution mechanism for individual as well as collective disputes. In the case of individual disputes either the employer or the employee may request that a labour officer assists in settling the dispute by conciliation.⁸⁸

Inspections of businesses happen very rarely. Although the *Employment Act* [Cap 160] makes it a criminal offence to breach its provisions,⁸⁹ no prosecutions under the Act have ever been recorded. No surveyed business had been inspected in the 3 years immediately prior to the administration of the questionnaire. Employees are, however, given a free “self-enforcement” method; taking a complaint to the labour department. Just over a third (34%) of all businesses surveyed had been contacted by the labour department about a complaint in the 3 years prior to the administration of the questionnaire. This method of enforcement relies upon the employee having knowledge of the labour laws. A further weakness is that employees usually do not lay

Colletta Moser above n 81 at p 398) in Vanuatu, where the only direct tax on businesses is VAT there is no tax advantage for employers to pay part of wages in the form of other benefits.

⁸⁵ There is considerable literature on the economics of crime. For an overview see Erling Eide, ‘Economics of Criminal Behavior’ in B. Bouckaert and G. De Geest, *Encyclopaedia of Law and Economics* <http://encyclo.findlaw.com/index.html> (Last accessed 11 May 2006).

⁸⁶ Section 3.

⁸⁷ Phone conversation with Lionel Kaluat 27 March 2006.

⁸⁸ Section 3.

⁸⁹ Section 78.

complaints until after employment has ceased, probably due to the fear that complaining will result in termination of employment.⁹⁰

No further data on the issue of lack of enforcement was collected, but what data there is suggests that in any policy response to labour laws, enforcement needs to be considered and self enforcement in itself cannot be relied upon.

Is labour law an “introduced irrelevance”?

This leaves the “post-colonial laws” question. In Pacific Island legal systems, where the rule of law is frequently challenged and/or state law is seen as being largely irrelevant, this separation is of particular interest, and is usually discussed as being part of the post colonial dynamic. Social norms are usually explicitly or implicitly linked with custom in the sense of traditional culture.⁹¹ Formal law is part of the “colonial legacy”, and is seen to represent “western” ways of doing things. It is conceived as being unfamiliar to indigenous populations and therefore unused. The relationship between formal law and social norms becomes settled into a dichotomy between “modern”/ “foreign” and “traditional”/ “local”, and ‘the inherent dichotomy between law and custom seems to have been generally accepted as a settled premise.’⁹² This debate is not unique to the Pacific, or even to post-colonial countries. Look at any country in which there has been a large amount of “legal transplantation” and there will be literature on the irrelevance of transplanted laws.⁹³

Legal pluralism is narrowly conceived as having ‘developed from the impact of Western colonialism and its implanted laws in societies where indigenous people had largely continued to function under their own customs and traditions, which comprised the non-Western face of law’⁹⁴ There is an assumption that the “modern” and “foreign” parts of Pacific societies – as exemplified by the private sector business community – will use law to order its relationships, if the formal legal system is working properly.

To examine this assumption, data on knowledge of employment law and use of law to solve employment problems was examined. Data was first analysed by country of citizenship,

⁹⁰ Conversation with Simeon Tavoia, labour officer 28 October 2004.

⁹¹ Bislama, the national language of Vanuatu, itself does not distinguish between culture, custom and tradition. *Kastom* is used to denote both traditional ways and culture, although the word *kalja* has recently entered the language. A signifier for the concept of custom that exists outside of tradition does not currently exist.

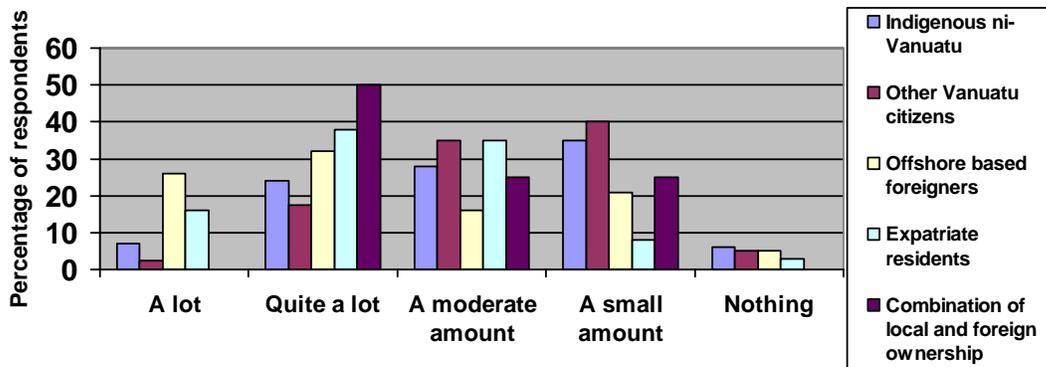
⁹² Johnathan Aleck, ‘Dreams of a Melanesian Jurisprudence’ in J Aleck and Jackson Rannels, *Custom at the Crossroads* (1995) 1.

⁹³ For example, East European transition economies contain considerable literature on the impact of legal transplants. Andras Sajó, talking of Russia, says, ‘Russians have finally obtained laws and legal institutions of the sort that function properly in the Western world. Why, then, are these laws neglected in Russia? Hendley... finds that when “reformers” created legal codes, they opted for Western solutions. Yet, even as these transplants were crafted, Russian realities were ignored. It is therefore no surprise, argues Hendley, that “ordinary Russians” find legislation and legal institutions irrelevant. In their view, “nothing has changed” since Soviet days, when legal norms were just a joke.’ (Andras Sajó, ‘Demand for Law’ (1999) 8(1) *Eastern European Constitutional Review* <http://www.law.nyu.edu/eecr/vol8num4/index.html>. See also Daniel Berkowitz, Katharina Pistor and Jean-Francois Richard, ‘Economic Development, Legality and the Transplant Effect, (CID Working Paper No 39, March 2000), which studies the impact of legal transplantation in 49 countries.

⁹⁴ Asiata Vaai, ‘The idea of law’ (1997) 21 *Journal of Pacific Studies* 225, 235.

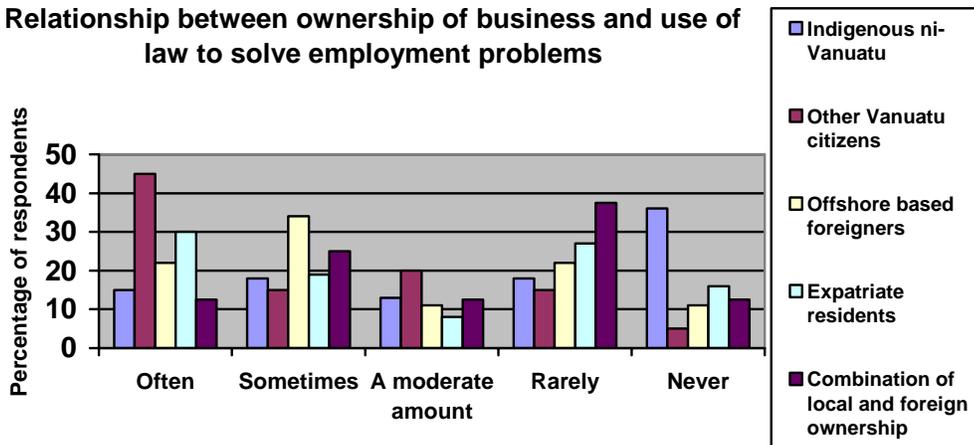
with responses of Vanuatu citizens and other citizens being compared. This comparison revealed very little difference between the two groups as the grouping was too simple. Of course citizens may not be indigenous ni-Vanuatu but may come from “western(ised)” backgrounds. The data was then analysed by the ownership of the business. This allowed me to break Vanuatu citizens into two groupings – indigenous ni-Vanuatu and other Vanuatu citizens. It also revealed differences between business practices within expatriate owned businesses and foreign owned businesses. As 75% of the respondents were owners or owner/managers, with most of the other 25% of respondents coming from local managers of foreign owned businesses these responses give me some indication of differences between indigenous ni-Vanuatu and other groups. As the table below indicates, respondents in both indigenous owned businesses and businesses owned by citizens were less confident of their knowledge of employment law than respondents in businesses in which there was foreign or expatriate ownership:

Relationship between ownership of business and self reported estimate of knowledge of employment law



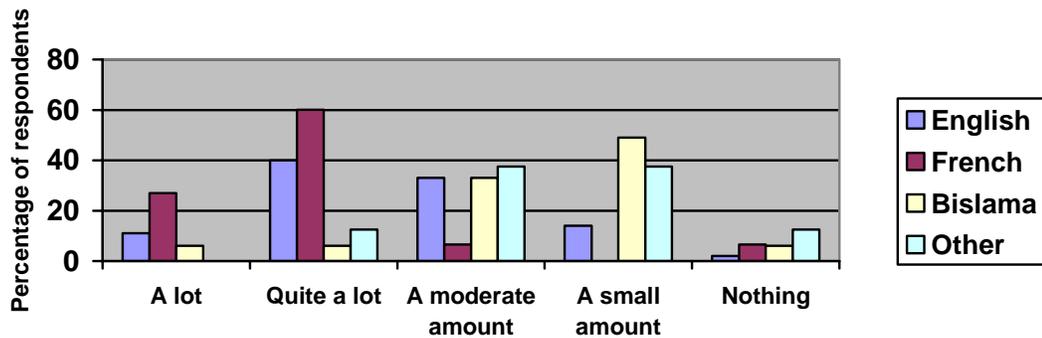
Ni-Vanuatu owned businesses were the least likely to use law to solve employment problems. Whilst this does fit with explanations about lack of use of law due to its foreignness, it was surprising to see that businesses owned by non-indigenous Vanuatu citizens were most likely to use employment law to solve disputes, even though as a group they were not particularly confident in their knowledge of it:

Relationship between ownership of business and use of law to solve employment problems

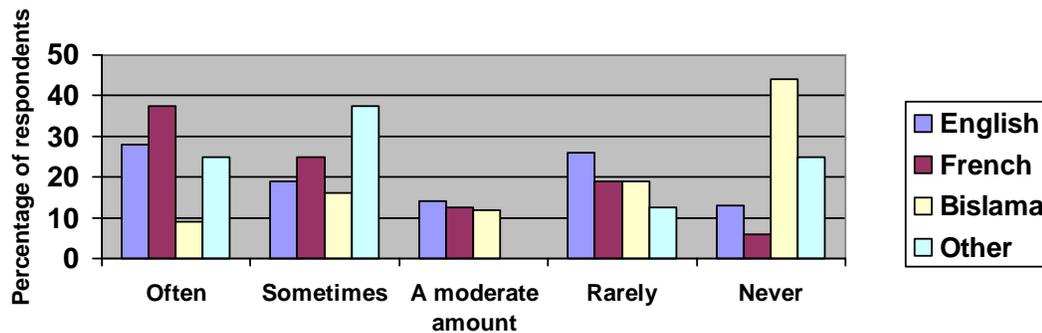


The data was also analysed by the primary language of the respondent, as this again gives an indication of the respondent's culture. Similar patterns emerged, with Bislama speakers being the least confident in their knowledge of employment law and the least likely to use employment law in solving problems.

Relationship between language and self reported estimate of knowledge of employment law

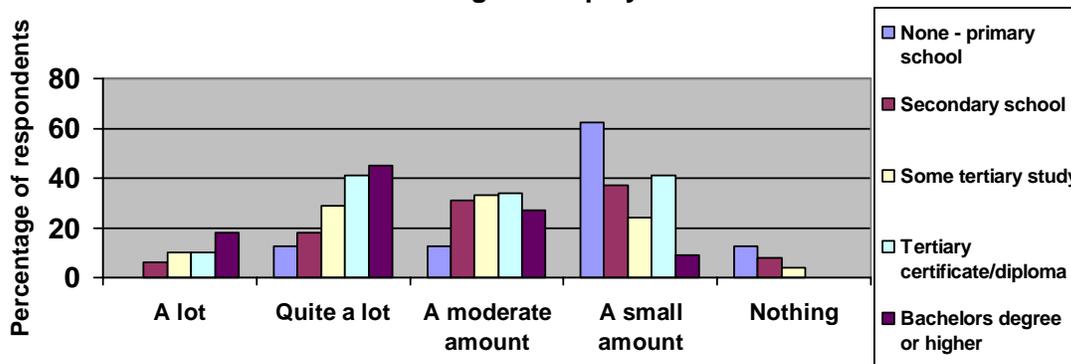


Relationship between language and use of law to solve employment problems

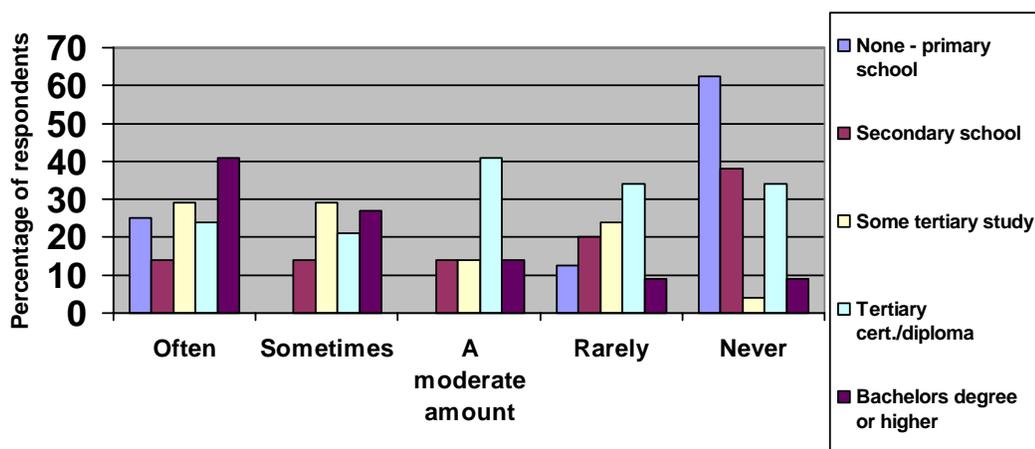


Language is an indicator of ethnicity, although a number of ni-Vanuatu respondents do use French or English as their primary language. Language usage relates to education, so further analysis on the education of the respondents was undertaken. The data indicated that as education increases the respondent's confidence in their knowledge of employment law also increases and the more education one has the more likely one is to use legal responses to employment problems.

Relationship between education and self reported estimate of knowldge of employment law



Relationship between education and use of law to solve employment problems



The data suggests that there is some plausibility in the hypothesis that law is not particularly relevant to ni-Vanuatu. However, this is not the whole story. Whilst ni-Vanuatu may claim less knowledge of labour law, law is still used to resolve employment disputes at times. Bislama speakers and less educated people of any ethnicity were less likely to use employment law to resolve disputes. This suggests that it is not only ethnicity that is important, but the degree of orientation towards the western state and law system. There is one more important point - it is not only ni-Vanuatu who do not make much use of the law.

THE IMPORTANCE OF MARKET PRACTICE AND FAIR PLAY

Earlier we had seen that employers paying more than statutory minimums expressed their decisions in terms of fairness. Market practice also seems to be a consideration, with different industry groupings taking different approaches to things such as the payment of VNPF, overtime payments, and payments for work done on public holidays. Could this help to explain why law is not the primary means of resolving legal disputes?

There is a considerable existing body of empirical work that supports this view that contract law is simply not that central to business relationships.⁹⁵ As Macaulay explains, the traditional view that contract law is central to the ordering of relationships makes a number of assumptions:

First that there is careful planning of relationships in light of legal requirements and the possibilities of non-performance. We must spell out everything because parties will perform only to the letter of a contract, if they go that far. Second, contract law is a body of clear rules so that it can facilitate planning. It provides formal channels so that we know the right way to proceed to produce desired legal consequences. Finally, contract litigation is a primary means of deterring breach and directly and indirectly resolving disputes. Without contract law and the state's monopoly of the legitimate use of force, performance would be highly uncertain.

However, all of these assumptions... are just wrong or so greatly overstated as to be seriously misleading. Contract planning and contract law, at best, stand at the margin of important long term business relations. Business people often do not plan, exhibit great care in drafting contracts, pay much attention to those that lawyers carefully draft, or honor a legal approach to business relationships.⁹⁶

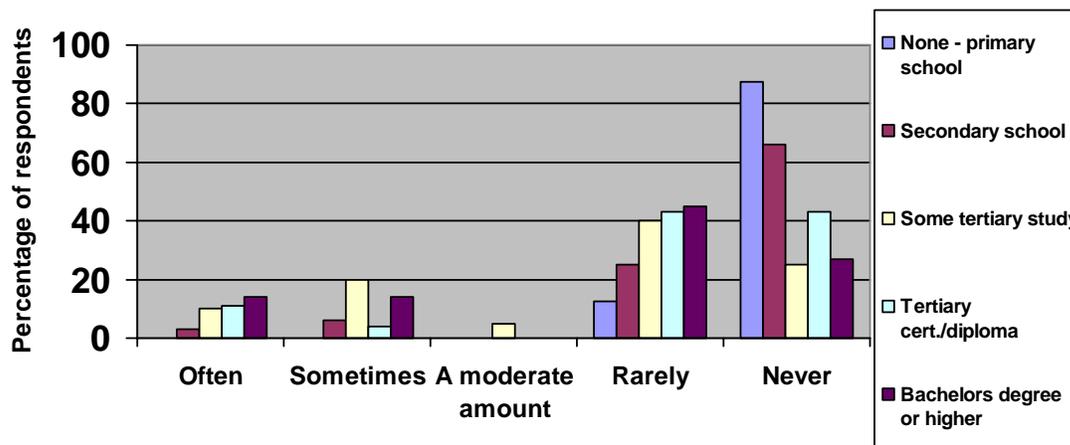
Data from this study bears out Macaulay's statements. Careful planning of the employment relationship at the outset does not appear to be a common business practice. Expatriate staff are legally required to have written contracts but a third of businesses with expatriate staff said their expatriate workers had no contract or a verbal contract only. This increases to 73% for local workers. As we have seen, knowledge of law does not suggest that it is perceived to be a body of clear rules.⁹⁷ We have already seen that there is not a great deal of use of employment law to solve employment problems. There is even less use of law to solve other sorts of business problems. The table below shows the relationship between education levels and use of law, as education was a significant factor influencing peoples' knowledge of labour law. However, as we can see, very few people, of any education level, make frequent use of law in resolving general problems:

⁹⁵ Stuart Macaulay, 'Non-contractual relations in business: a preliminary study' (1963) *American Sociological Review* 55 is a seminal empirical socio-legal study in this area. Others are listed in Morten Hviid, 'Long term and relational contracts' in B. Bouckaert and G. De Geest, *Encyclopaedia of Law and Economics* <http://encyclo.findlaw.com/index.html>

⁹⁶ Stuart Macaulay, above n 6 at 467.

⁹⁷ Non-lawyers who have read the *Employment Act* may also be misled by the apparent simplicity of its provisions. The Act has been amended on several occasions and there is a body of case law which supplements it so it is very difficult for a non-lawyer to access the legal rules surrounding employment contracts.

Relationship between education and use of law to solve business problems



Instead, Macaulay suggests, maintaining a good reputation is very important, and may act as an effective non legal sanction against any breaches of contract or unfair behaviour. If someone does not “play by the (unwritten) rules” then people will no longer deal with him or her.⁹⁸ This explanation is particularly appealing as it is similar to explanations of how indigenous customary law works – in a small group upholding social norms is important in order to avoid loss of reputation or ostracism. In a small town environment where little remains secret and customary law already has an important place, it is, maybe, unsurprising to see the importance of social networks and reputation even in a non-customary setting.

The indication that law is used more in employment problems than in other kinds of business problems at first seems a little strange, but there are a number of possible explanations for that. First, employers are in a position of relative power in relation to their employees. They are not customers or suppliers, who have to be kept happy in order to ensure continued good dealings. Once a decision has been made to deal with an employment problem by terminating the employee there is, maybe, little need to worry about potential damage to ongoing relationships that might be caused by insisting upon ones’ legal rights. Second, maybe employees are not concerned about potential damage to their reputations by insisting upon their legal rights on termination. Whilst in a “business to business” dispute both parties may be reluctant to proceed to legal solutions, in employment matters one party may not have this same reluctance. Finally, the nature of employment contracts and the intention of employment law may also be relevant. Employment contracts are long-term relational contracts. One of the difficulties with this type of contract is that it is impossible to foresee every contingency so contracts are necessarily incomplete. This leads to uncertainty, or to increased transaction costs if there is an attempt to negotiate a full contract before entering into an employment relationship. One of the aims of employment contracts law is to provide a “statutory safety-net”

of implied contractual terms to fill in gaps that may have been left in contracts. When disputes arise there is more need to make use of the law to determine what the actual nature of the agreement is. Employment law's role in setting up a framework to cover a number of contingencies and therefore reducing the costs of negotiating new contracts or the risks of having incomplete contracts is, maybe, its most important task. Law may not have a central role in regulating employment relationships, but it is an important backup mechanism in things go wrong.

CONCLUSION

The data suggests that my initial proposal to examine how labour laws impact on employers costs missed the more fundamental question of how employers use labour law. In designing my research I allowed myself to be bound by the disciplinary paradigm of law and a related "law and economics" paradigm which made unrealistic assumptions about the importance of state law in regulating day to day behaviour. This, then, is my first conclusion. Approaching policy questions from the narrow disciplinary perspective of law will necessarily result in gaps between laws and actual practice in society. Instead we need

new ways of measuring the performance of legal institutions and new ways of redesigning those institutions to facilitate interchange with a more alert public. To get to there from here, we need a new generation of research about what law means in people's lives; what gives it its hold, its influence, its attraction; why it repels or frightens; whether it is dependent upon illusions about its character...⁹⁹

These sorts of questions are not uncommon in socio-legal studies in the Pacific, but at the moment it is unusual to ask them outside of the context of the dislocation between state laws and the social norms of indigenous populations. More commonly the questions are raised in the context of legal transplantation. The common argument is that 'since laws are cultural artefacts that mirror the "felt needs" of society, they are unlikely to induce the same behaviour in different societies.'¹⁰⁰ The foreignness of law is used to explain various manifestations of the lack of respect for the rule of law.¹⁰¹ Whilst this is important, it is not, and should not be considered to be, the only cause of legal pluralism in Vanuatu. In order to develop a more cohesive and effective legal system, all the different layers of law need to be acknowledged.

Redesigning institutions is, of course, not a small task. Until that is done, it is reassuring to note that changes to labour laws as part of an overall policy of enhancing private

⁹⁸ See Stuart Macaulay, above n 94.

⁹⁹ Marc Galanter, as quoted in Stuart Macaulay, above n 6 at p 481.

¹⁰⁰ John Gillespie, 'Globalisation and legal transplantation: Lessons from the past' (2001) *Deakin Law Review* 5 <http://www.austlii.edu.au/au/journals/DeakinLRev/2001/5.html> (Accessed 11 August 2004).

¹⁰¹ See Graham Hassall, 'Governance, Legitimacy and the Rule of Law in the South Pacific', in Anita Jowitt and Tess Newton Cain (eds) *Passage of Change: Law, society and governance in the Pacific* (2003) 51.

sector development are really not that important. In an environment like Vanuatu's there are a number of other more significant barriers to this including: poor telecommunications; high telecommunications costs; high electricity costs; lack of local markets for goods and services; poor and expensive shipping creating barriers to export markets; volcanoes, cyclones, earthquakes and other natural disasters. There are currently surprisingly few complaints about the labour laws. Just so long as labour costs are not set too high and then vigorously enforced, labour laws do not appear to create any significant barrier to private sector development.

APPENDIX: Questionnaire

A. BACKGROUND

1. Are you the

1. Owner of the business
 2. Manager of the business
 3. Owner/Manager of the business
 4. Other (specify) _____

2. Sex

1. Male
 2. Female

3. Which industry category does your business fall into? (Select 1 only)

- | | |
|--|---|
| <input type="checkbox"/> 1. Agriculture, forestry, fishing | <input type="checkbox"/> 7. Transport and Communication |
| <input type="checkbox"/> 2. Manufacturing | <input type="checkbox"/> 8. Finance and Insurance |
| <input type="checkbox"/> 3. Electricity and water | <input type="checkbox"/> 9. Other business services |
| <input type="checkbox"/> 4. Construction | <input type="checkbox"/> 10. Other Services |
| <input type="checkbox"/> 5. Retail and wholesale trade | <input type="checkbox"/> 11. Other (specify) _____ |
| <input type="checkbox"/> 6. Hotels and restaurants | |

4. Are you registered for VAT?

1. Yes
 2. No
 3. No, because the business turns over under 4 million vatu per year
 4. No, because the business is VAT exempt

5. Who owns this business?

1. Indigenous Ni-Vanuatu
 2. Other Ni-Vanuatu nationals
 3. Naturalized citizens
 4. Offshore based foreigner(s)
 5. Expatriate resident(s)
 6. A combination of citizens and expatriate residents and/or foreigners

6. How many paid employees do you have in this business? (Investors and owner/operators are not employees)

Expatriate full time	
Expatriate part time (regular)	
Expatriate casual	
Local full time	
Local part time (regular)	
Local casual	
Total full time	
Total part time and casual	

7. How many years has this business been operating?

- | | |
|---|--|
| <input type="checkbox"/> 0 – 3 years | <input type="checkbox"/> 3 – 6 years |
| <input type="checkbox"/> 6 – 9 years | <input type="checkbox"/> 9 – 12 years |
| <input type="checkbox"/> 12 – 15 years | <input type="checkbox"/> 15 – 18 years |
| <input type="checkbox"/> 18 years or more | |

8. How many years have you been in business in Vanuatu for?

- | | |
|---|--|
| <input type="checkbox"/> 0 – 3 years | <input type="checkbox"/> 3 – 6 years |
| <input type="checkbox"/> 6 – 9 years | <input type="checkbox"/> 9 – 12 years |
| <input type="checkbox"/> 12 – 15 years | <input type="checkbox"/> 15 – 18 years |
| <input type="checkbox"/> 18 years or more | |

9. What is the highest level of education you have completed? (Select the closest equivalent from the categories)

- | | | | |
|--------------------------|---------------------------------|--------------------------|--------------------------------------|
| <input type="checkbox"/> | 1. None | <input type="checkbox"/> | 7. Some university study |
| <input type="checkbox"/> | 2. Some primary school | <input type="checkbox"/> | 8. Trade qualification |
| <input type="checkbox"/> | 3. Completed primary school | <input type="checkbox"/> | 9. University certificate or diploma |
| <input type="checkbox"/> | 4. Some secondary school | <input type="checkbox"/> | 10. Bachelors degree |
| <input type="checkbox"/> | 5. Completed secondary school | <input type="checkbox"/> | 11. Higher university degree |
| <input type="checkbox"/> | 6. Some polytechnic/trade study | | |

10. What is your country of citizenship?

1. Vanuatu
 2. Other

11. What do you identify as your primary language? (Select one only)

1. English
 2. French
 3. Bislama
 4. Other (specify) _____

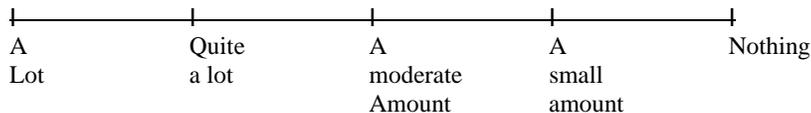
12. What group of people/businesses forms your primary clientele? (Select one only)

1. Tourists
 2. Ni-Vanuatu individuals
 3. French speaking expatriate individuals
 4. English speaking expatriate individuals
 5. English speaking businesses
 6. French speaking businesses
 7. Other (specify) _____

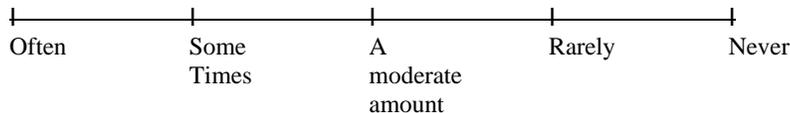
B. GENERAL AWARENESS/USE OF EMPLOYMENT LAW

Employment law is the law that governs the relationship between workers and employers – it covers things such as wages, leave, and employment contract matters.

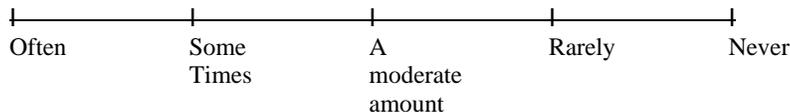
13. How much would you say you know about Vanuatu's employment laws and employers' obligations under them? (Circle the appropriate response)



14. How frequently do you come across issues at work that involve employment law?



15. When you have a problem with an employee, how often will you use employment law to help solve it?



16. In the last 3 years have you or the business consulted a lawyer about any employment related matter or matters?

- ___ 1. Yes
___ 2. No

16(a) If yes, how many times _____

16(b). If yes, what was that matter/were those matters? (Tick all that apply)

- ___ 1. Drafting a contract
___ 2. Determining how to terminate a staff member
___ 3. Involved in a dispute about termination
___ 4. Trying to determine severance allowance payments
___ 5. Involved in a dispute about severance allowance
___ 6. Involved in a dispute about payments for workplace accidents
___ 7. Other (specify) _____

17. In the last 3 years have you or the business gone to court about any employment related matter?

- ___ 1. Yes
___ 2. No

17(a) If yes, how many times _____

17(b) If yes, what was that matter/were those matters?

- ___ 1. A dispute about termination
___ 2. A dispute about severance allowance
___ 3. A dispute about health and safety
___ 4. Other (specify) _____

18. In the last 3 years has the department of labour contacted you or the business about any employment related matter?

- ___ 1. Yes
___ 2. No

18(a) If yes, how many times _____

18(b) If yes, what was that matter/were those matters (Tick all that apply)

- ___ 1. An employee was complaining about being terminated
___ 2. An employee was complaining about severance allowance payments
___ 3. An employee was complaining about a health and safety matter
___ 4. A routine inspection
___ 5. Other (specify) _____

19. In the last 3 years have you or the business consulted the department of labour about any employment related matter?

- ___ 1. Yes
___ 2. No

19(a) If yes, how many times _____

19(b). If yes, what was that matter/were those matters? (Tick all that apply)

- ___ 1. Drafting a contract
___ 2. Determining how to terminate a staff member
___ 3. Involved in a dispute about termination
___ 4. Trying to determine severance allowance payments
___ 5. Involved in a dispute about severance allowance

- ___ 6. Involved in a dispute about payments for workplace accidents
 ___ 7. Other (specify)_____

20. Do you think that the Labour Officers apply the law accurately when resolving disputes between employers and employees?

- ___ 1. Yes
 ___ 2. No
 ___ 3. Not always
 ___ 4. I don't know

21. Do you think the Labour Officers are fair in their dealings with employers and employees?

- ___ 1. Yes
 ___ 2. No they favour employees
 ___ 3. No they favour employers
 ___ 4. They favour the enquiring party
 ___ 5. It depends on the case
 ___ 6. I don't know/no opinion
 ___ 7. Other (specify)_____

22. What sort of employment contracts do your expatriate staff currently have?

- ___ 1. Not applicable, no expatriate staff
 ___ 2. No contract
 ___ 3. Verbal contract
 ___ 4. Individual written contract
 ___ 5. Collective contract
 ___ 6. A mixture (explain)_____

23. What sort of employment contracts do your local staff have?

- ___ 1. Not applicable, no local staff
 ___ 2. No contract
 ___ 3. Verbal contract
 ___ 4. Individual written contract
 ___ 5. Collective contract
 ___ 6. A mixture (explain)_____

C. WAGES & PAYMENTS

24. How many of your staff receive a wage of 91 vatu or less per hour?

- ___ 1. None of them
 ___ 2. Some of them
 ___ 3. All of them

25. How many of your staff receive a wage of 182 vatu or more per hour?

- ___ 1. None of them
 ___ 2. Some of them
 ___ 3. All of them

26. If Vanuatu had no minimum wage do you think you would employ more workers?

- ___ 1. Yes
 ___ 2. No
 ___ 3. I don't know/am unsure

27. If Vanuatu's minimum wage were doubled do you think your total number of employees/hours of labour input decrease? (Current minimum wage is 16,000 vatu per month, or 91 vatu per hour – double is 32,000 vatu per month, or 182 vatu per hour)

- ___ 1. Yes

- 2. No
- 3. I don't know/am unsure

Do you have any comments on how wage rates affect your business or the number of staff you have?

28. Do any of your non managerial staff ever work overtime? (More than 44 hours per week)

- 1. Yes
- 2. No

28(a) If yes, how do you calculate overtime payments

- 1. Staff are paid at their usual rate of pay
- 2. Staff are paid time and a half
- 3. Staff are paid double time
- 4. Overtime is calculated in accordance with the Employment Act
- 5. Other (explain) _____

D. ANNUAL LEAVE AND PAID HOLIDAYS

29. How much paid annual leave are your full time employees given, in addition to public holidays? (If different staff are given different leave amounts list leave for each full time employee and comment on why there is a difference)

30. How much paid annual leave are your part time employees given, in addition to public holidays? (If different staff are given different leave amounts list leave for each full time employee and comment on why there is a difference)

31. What is the basic statutory annual leave allowance for full time staff?

- 1. I don't know
- 2. 10 days per year
- 3. 12 days per year
- 4. 2 working weeks per year
- 5. Other (specify) _____

32. Do you ever require staff to work on public holidays?

- 1. Yes
- 2. No

32(a) If yes, what rate of pay do they get for working on public holidays?

- 1. The same as usual
- 2. The same as usual, but they get given a paid day off at some other time
- 3. The same as usual, but they get given an unpaid day off at some other time
- 4. Time and a half
- 5. Double time
- 6. Other (specify) _____

33. Do you pay staff for public holidays that they have off?

- ___ 1. Yes
- ___ 2. No

34. If the statutory annual leave allowance was 5 days per year, would you give your employees only 5 days leave per year?

- ___ 1. Yes
- ___ 2. No
- ___ 3. It would depend what other employers did
- ___ 4. I don't know

E. SUPERANNUATION

35. How much do you contribute to VNPF for your staff?

- ___ 1. I do not contribute to VNPF as my staff all earn less than 3,000 vatu per month
- ___ 2. I do not contribute to VNPF
- ___ 3. I contribute 6% of their salary
- ___ 4. I contribute 12 % of their salary
- ___ 5. Other (explain) _____

36. Does the payment of VNPF affect your decision on how much to pay your staff as a basic wage?

- ___ 1. Yes
- ___ 2. No

37. Do you pay into any other pension funds for staff in addition to VNPF?

- ___ 1. Yes
- ___ 2. No

38. Do you think the current rate of the employer contribution to VNPF is set too high?

- ___ 1. Yes
- ___ 2. No – it is at the right level
- ___ 3. No – it is too low
- ___ 4. I don't know/have no opinion

F. TERMINATION

39. Do you pay staff severance allowance on termination?

- ___ 1. Yes
- ___ 2. No
- ___ 3. N/A (Explain) _____

40. Do you have any way of minimising or spreading the load of the severance allowance?

- ___ 1. N/A – I do not pay severance allowance
- ___ 2. Yes – I pay all or some of my employees money for severance each year
- ___ 3. Yes – All of my staff are short term (under 1 year) or casual workers
- ___ 4. Yes – I keep my own separate savings account to cover severance allowance
- ___ 5. No
- ___ 6. Other (specify) _____

41. Do you think that the idea of employers giving severance allowance is a good thing?

- ___ 1. Yes
- ___ 2. No

42. Do you think that Vanuatu has set the amount of severance allowance too high?

- ___ 1. Yes

___ 2. No

43. Do you think that the laws relating to severance allowance are clear enough?

___ 1. Yes
 ___ 2. No

G. HEALTH AND SAFETY

44. Do you maintain an insurance policy that covers workplace injuries for all employees?

___ 1. Yes
 ___ 2. No

45. Do you give your staff any specific training on how to avoid accidents or injury at work?

___ 1. N/A for my staff
 ___ 2. No
 ___ 3. Yes (explain) _____

46. In the past 3 years have any employees been injured at work?

___ 1. Yes
 ___ 2. No

46(a) If yes, for each incident explain nature of the injury, the cause, the medical expenses paid by you and the compensation paid by you

Type of injury	Cause	Medical expenses paid by the employer	Compensation paid by the employer	Other comments?

47. What first aid equipment do you provide for the use of staff?

___ 1. None
 ___ 2. There are some painkillers, bandaids et cetera around somewhere
 ___ 3. Basic first aid kit
 ___ 4. Comprehensive first aid kit
 ___ 5. Sick bay room without nurse/first aid trained person
 ___ 6. Sick bay room with nurse/first aid trained person
 ___ 7. Other (specify) _____

48. Do you train any of your staff in first aid or pay for their training?

___ 1. Yes – all of my staff are trained
 ___ 2. Yes – I train staff who have responsibility for health and safety at work
 ___ 3. Yes – some staff are trained
 ___ 4. No

H. HOUSEHOLD EMPLOYMENT

49. At home do you employ a housekeeper or housekeepers?

- 1. Yes
- 2. No

49(a). If yes, what is the total number of hours that your housekeeper or housekeepers work, on average? (If you have two house keepers who each work 4 hours per week, then the number of hours will be 8, for example)

- | | | | |
|--------------------------|---------------------|--------------------------|----------------------|
| <input type="checkbox"/> | 0 – 4 (1/2 a day) | <input type="checkbox"/> | >24 – 28 (3 ½ days) |
| <input type="checkbox"/> | >4- 8 (1 day) | <input type="checkbox"/> | >28 – 32 (4 days) |
| <input type="checkbox"/> | >8 – 12 (1 ½ days) | <input type="checkbox"/> | >32 – 36 (4 ½ days) |
| <input type="checkbox"/> | >12 -16 (2 days) | <input type="checkbox"/> | >36 – 40 (5 days) |
| <input type="checkbox"/> | >16 – 20 (2 ½ days) | <input type="checkbox"/> | Other (specify)_____ |
| <input type="checkbox"/> | >20 – 24 (3 days) | | |

49(b). If yes, do you pay VNPF for your housekeeper or housekeepers?

- 1. Yes
- 2. No
- 3. N/A, as my housekeeper is paid under 3,000 vatu per month

50. At home do you employ a gardener or gardeners?

- 1. Yes
- 2. No

50(a). If yes, what is the total number of hours that your gardener or gardeners work each week, on average? (If you have two gardeners who each work 4 hours per week, then the number of hours will be 8, for example)

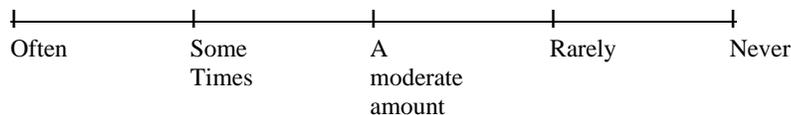
- | | | | |
|--------------------------|---------------------|--------------------------|----------------------|
| <input type="checkbox"/> | 0 – 4 (1/2 a day) | <input type="checkbox"/> | >20 – 24 (3 days) |
| <input type="checkbox"/> | >4- 8 (1 day) | <input type="checkbox"/> | >24 – 28 (3 ½ days) |
| <input type="checkbox"/> | >8 – 12 (1 ½ days) | <input type="checkbox"/> | >28 – 32 (4 days) |
| <input type="checkbox"/> | >12 -16 (2 days) | <input type="checkbox"/> | >32 – 36 (4 ½ days) |
| <input type="checkbox"/> | >16 – 20 (2 ½ days) | <input type="checkbox"/> | >36 – 40 (5 days) |
| | | <input type="checkbox"/> | Other (specify)_____ |

50(b). If yes, do you pay VNPF for your gardener or gardeners?

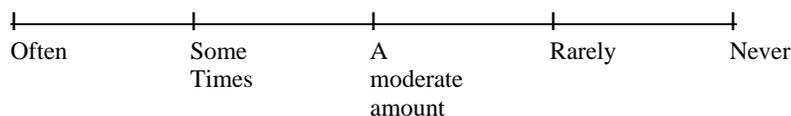
- 1. Yes
- 2. No
- 3. N/A, as my gardener is paid under 3,000 vatu per month

I. GENERAL USE OF LAW

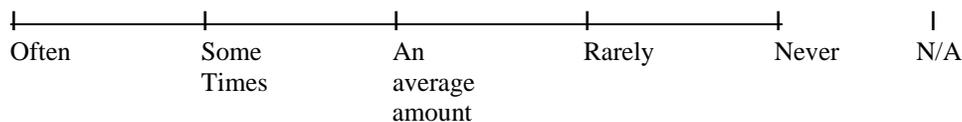
51. How often do you use law or lawyers to help solve/resolve business problems or disputes? (Circle appropriate response)



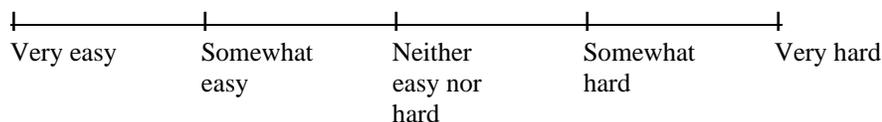
52. How often do you use law or lawyers to help solve/resolve non business related problems or disputes?



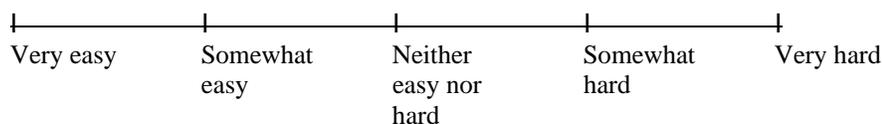
53. How often do you use the police to help solve/resolve problems with crime?



54. How easy is it to find out about the national laws or rules that you have to follow?



55. How easy is it to find out about the municipal laws or rules that you have to follow?



56. What barriers prevent you, or hinder you from using the legal system? (Tick all that apply)

- 1. None
- 2. Cost of lawyers
- 3. No good lawyers in town
- 4. Cost of court
- 5. Time delays in going to court
- 6. Can't rely on judges/magistrates to make good decisions
- 7. Unfamiliar with court/legal procedures
- 8. The police are ineffective
- 9. The judicial system is corrupt
- 10. Other (specify) _____

57. Which barrier do you think creates the biggest hindrance to you using the legal system? (Select only one)

- 1. None
- 2. Cost of lawyers
- 3. No good lawyers in town
- 4. Cost of court
- 5. Time delays in going to court
- 6. Can't rely on judges/magistrates to make good decisions
- 7. Unfamiliar with court/legal procedures
- 8. The police are ineffective
- 9. The judicial system is corrupt
- 10. Other (specify) _____

BIBLIOGRAPHY

STATUTES & ORDERS

- *Constitution of the Republic of Vanuatu.*
- *Business License Act 1998.*
- *Employment Act [Cap 160].*
- *Employment Amendment Act 1995.*
- *Land Leases Act [Cap 163].*
- *Minimum Wage and Minimum Wages Board Act [Cap 182].*
- *Minimum Wage Order 2005 (Order 43 of 2005).*
- *Minimum Wage Order 1995 (Order 5 of 1995).*
- *Minimum Wage Order 1991 (Order 27 of 1991).*
- *Minimum Wage Order 1987 (Order 56 of 1987).*
- *Public Holidays Act [Cap 114].*
- *State of Emergency Order 1998 (Order No. 12 of 1998).*
- *Trade Disputes Act [Cap 162].*
- *Value Added Tax Act 1998.*
- *Vanuatu National Provident Fund Act [Cap 189].*
- *Vanuatu National Provident Fund Amendment Act 2003.*

CASE LAW

- *Bank Indosuez v Ferrieux 2 [1989 – 94] Van LR 490.*
- *Daniel v Nguyen Huu Hong [2004] VUSC 40 www.paclii.org*
- *Mouton v Selb Pacific Ltd (Judgment #3) [1998] VUCA 8 www.paclii.org*
- *Public Service Commission v Manuake [2003] VUCA 21 www.paclii.org*

BOOKS AND CHAPTERS IN BOOKS

- Johnathan Aleck, ‘Dreams of a Melanesian Jurisprudence’ in Jonathan Aleck and Jackson Rannells, *Custom at the Crossroads* (1995) 1.
- Asian Development Bank, *Vanuatu, Economic Performance, Policy and Reform Issues* (1997).
- Simeon Athy & Ferdinand van der Walle (eds), *20 years of Central Banking in Vanuatu* (2000).
- Erling Eide, ‘Economics of Criminal Behavior’ in B. Bouckaert and G. De Geest, *Encyclopaedia of Law and Economics* <http://encyclo.findlaw.com/index.html>.
- Graham Hassall, ‘Governance, Legitimacy and the Rule of Law in the South Pacific’, in Anita Jowitt and Tess Newton Cain (eds) *Passage of Change: Law, society and governance in the Pacific* (2003).
- Morten Hviid, ‘Long term and relational contracts’ in B. Bouckaert and G. De Geest, *Encyclopaedia of Law and Economics* <http://encyclo.findlaw.com/index.html>.
- Theo Levantis *Papua New Guinea, Employment Wages and Economic Development* (2000).
- Lewis, *The Theory of Economic Growth* (1955).

- Douglas McTaggart, Christopher Findlay and Michael Parkin, *Economics* (2nd ed, 1996).
- Paul McGavin, *Labour resource utilisation in Melanesia* (1997).
- Richard Posner, *Economic Analysis of Law*, (1998, 5th ed).
- Andre Raynauld and Jean-Pierre Vidal, *Labour Standards and International Competitiveness* (1998)
- Lloyd Reynolds, Stanley Masters & Colletta Moser, *Labor Economics and Labor Relations* (11th ed, 1998) 399.
- United Nations Development Program *Pacific Human Development Report 1999* (1999).

ARTICLES, CONFERENCE PAPERS AND DISCUSSION PAPERS

- James E Bartlett, Joe W Kotrlik and Chadwick C Higgins, ‘Organizational Research: Determining Appropriate Sample Size in Survey Research’ (2001) 19(1) *Information Technology, Learning and Performance Journal* 43.
- Daniel Berkowitz, Katharina Pistor and Jean-Francois Richard, ‘Economic Development, Legality and the Transplant Effect’, (CID Working Paper No 39, March 2000).
- Satish Chand, ‘Ethnic Identity, Income Inequity and Growth in Independent Fiji’ (State Society and Governance in Melanesia Discussion Paper 97/6, 1997).
- David Colander, Ric Holt and Barkley Rosse ‘The Changing Face of Mainstream Economics’ (Middlebury College Economics Discussion Paper 03-27, 2003).
- John Gillespie, ‘Globalisation and legal transplantation: Lessons from the past’ (2001) *Deakin Law Review* 5
<http://www.austlii.edu.au/au/journals/DeakinLRev/2001/5.html>.
- Leslie Green, ‘Legal Positivism’ (2003) *Stanford Encyclopedia of Philosophy*
<http://plato.stanford.edu/entries/legal-positivism/>.
- Tarcissius Kabutaulaka, ‘Beyond Ethnicity: The political economy of the Guadalcanal Crisis in Solomon Islands’ (State Society and Governance in Melanesia Working Paper 01/1, 2001).
- Stuart Macaulay, ‘Non-contractual relations in business: a preliminary study’ (1963) *American Sociological Review* 55.
- Stuart Macaulay, ‘Symposium: Law, private governance and continuing relationships: An empirical view of contract’ (1985) *Wisconsin Law Review* 480.
- Maeve O’Collins ‘Law and Order in Papua New Guinea: Perceptions and Management Strategies’ (State Society and Governance in Melanesia Working Paper 00/1, 2000).
- Nicola Reimann, ‘First Year Teaching-Learning Environments in Economics’ (Paper presented at EARLI Conference, Padova, August 2003).
- Andras Sajo, ‘Demand for Law’ (1999) 8(1) *Eastern European Constitutional Review* <http://www.law.nyu.edu/eecr/vol8num4/index.html>
- J. E. Stiglitz, ‘Employment, Social Justice and Societal Wellbeing’ (2002) 141(1-2) *International Labour Review* 9.
- Asiata Vaai, ‘The idea of law’ (1997) 21 *Journal of Pacific Studies* 225.

WEBSITES

- Edward Hill, 'Digest of Vanuatu Ombudsman's Reports' (2001)
http://paclii.org.vu/vu/ombudsmanreports/Vanuatu/Digest/digest_index.html
- South Pacific Commission, 'Oceania Population Data 2004'
<http://www.spc.int/demog/en/stats/2004/Pacific%20Island%20Populations%202004.xls>
- Vanuatu Investment Promotion Authority website,
<http://www.investinvanuatu.com/vanuatu/policies.htm>
- Wikipedia, 'Vanuatu' <http://en.wikipedia.org/wiki/Vanuatu>
- United Nations, 'List of LDCs' <http://www.un.org/special-rep/ohrlls/ldc/list.htm>
- United Nations Development Program 'Human Development Report 2005'
<http://hdr.undp.org/reports/global/2005/>

NEWSPAPER AND MAGAZINE ARTICLES

- 'Gang Attack Fires Fears' *Trading Post* 28th October 2000, 1.
- 'Globalisation and its critics: A survey of globalisation' *The Economist* 29 September 2001, Lift out section.
- 'PM says Vanuatu can avoid 'Coup' *Vanuatu Weekly Hebdominaire* 10 June 2000, 1.
- 'Unemployment likely reason for increased theft and sex offences' *Trading Post*, 15 Jan 2000, 3.

GOVERNMENT REPORTS

- Reserve Bank of Vanuatu, *Quarterly Economic Review December 2005*.
- Vanuatu National Statistics Office, *Small Business and Informal Sector Survey 1995 Report* (1996).
- Vanuatu National Statistics Office, *Household Income and Expenditure Survey 1998 Tabulation Report* (1999).
- Vanuatu National Statistics Office, *1999 Vanuatu National Population and Housing Census main report* (1999).
- Vanuatu National Statistics Office, *Vanuatu 2000 Labour Market Survey Report* (2000).

CONSULTANTS' REPORTS

- Anon, 'Costs of Doing Business in the Pacific' (Session 1 paper, Forum Economic Ministers Meeting, Funafuti, Tuvalu, 8 – 9 June 2005).
- SRI International, 'Private Enterprise Strategy Options for the South Pacific Region' (Report prepared for Bureau for Private Enterprise, US Agency for International Development, March 1988).